

90-474

Supreme Court, U.S.

FILED

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JOSEPH F. SPANOL, JR.
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NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER 1990 TERM

JOSEPH M. WARD

PETITIONER (PLAINTIFF)

V

THE DAILY REFLECTOR, INC.

ALVIN TAYLOR

RESPONDENTS (DEFENDANTS)

PETITION FOR WRIT OF CERTIORARI TO
THE NORTH CAROLINA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

- I. PURSUANT TO THE 1ST AMENDMENT OF THE UNITED STATES CONSTITUTION, DOES THE PETITIONER-PLAINTIFF'S PROTECTION FROM FALSE DEFAMATION OF THE DEFENDANTS BEGIN AT THE SAME POINT WHERE THE DEFENDANTS' RIGHT TO FALSELY DEFAME HIM ENDS?
- II. DOES THE TRIAL COURT'S DISMISSAL OF ALL OF THE PETITIONER-PLAINTIFF'S CLAIMS VIOLATE HIS RIGHT TO BE PROTECTED FROM UNJUSTIFIED FALSE DEFAMATION, PURSUANT TO THE 1ST AMENDMENT OF THE UNITED STATES CONSTITUTION, AND/OR DENY HIS RIGHT TO A CLAIM (S) RECOGNIZED UNDER NORTH CAROLINA LAW, THEREBY DENYING HIS RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAWS, PURSUANT TO THE 5TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION?

III. DOES THE AFFIRMATION BY THE NORTH CAROLINA COURT OF APPEALS OF THE TRIAL COURT'S DISMISSAL OF ALL OF THE PETITIONER-PLAINTIFF'S CLAIMS VIOLATE HIS RIGHT TO BE PROTECTED FROM UNJUSTIFIED FALSE DEFAMATION, PURSUANT TO THE 1ST AMENDMENT OF THE UNITED STATES CONSTITUTION, AND/OR DENY HIM HIS RIGHT TO A CLAIM (S) RECOGNIZED UNDER NORTH CAROLINA LAW, THEREBY DENYING HIM HIS RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAWS, PURSUANT TO THE 5TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION?

IV. DOES THE DISMISSAL OF THE PETITIONER-PLAINTIFF'S APPEAL AND/OR THE DENIAL OF HIS PETITION FOR DISCRETIONARY REVIEW BY THE NORTH CAROLINA SUPREME COURT VIOLATE HIS RIGHT TO BE PROTECTED FROM UNJUSTIFIED FALSE

DEFAMATION, PURSUANT TO THE 1ST
AMENDMENT OF THE UNITED STATES
CONSTITUTION AND/OR DENY HIM HIS
RIGHT TO A CLAIM (S) RECOGNIZED
UNDER NORTH CAROLINA LAW, THEREBY
DENYING HIM HIS RIGHT TO DUE PROCESS
AND EQUAL PROTECTION UNDER THE LAWS,
PURSUANT TO THE 5TH AND 14TH
AMENDMENTS OF THE UNITED STATES
CONSTITUTION?

V. ARE SUFFICIENT SAFEGUARDS IN PLACE
TO ENSURE THAT STATE APPELLATE
COURTS ADEQUATELY FULFILL THEIR
DUTIES RELATING TO DUE PROCESS AND
EQUAL PROTECTION UNDER THE LAWS,
PURSUANT TO THE 5TH AND 14TH
AMENDMENTS OF THE UNITED STATES
CONSTITUTION?

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REFERENCE TO OFFICIAL AND
UNOFFICIAL REPORTS OF OPINIONS
DELIVERED IN THIS CASE BY OTHER COURTS

The Plaintiff's claim for false light invasion of privacy was dismissed pursuant to Rule 12 (b)(6) of the North Carolina Rules of Civil Procedure and the rest of his claims were dismissed pursuant to Rule 41 (a)(1) of the North Carolina Rules of Civil Procedure by an Order entered in Pitt County (N.C.) Superior Court. In an unpublished Opinion (not to be given consideration in other cases), the North Carolina Court Of Appeals affirmed the dismissal. The North Carolina Supreme Court later issued an Order dismissing the appeal of the Plaintiff-Appellant (the Petitioner) and denying his petition for discretionary review. See Appendix, pp 1-11.

STATEMENT OF THE GROUNDS ON
WHICH JURISDICTION OF THIS COURT
IS INVOKED

The Petitioner seeks review of the Order of the North Carolina Supreme Court entered in this action on June 18, 1990, the Opinion of the North Carolina Court of Appeals entered on March 20, 1990 and the Order (dismissing all of his claims) entered in Pitt County Superior Court (N.C.) entered on May 25, 1989. No order respecting a rehearing was entered and no order or extension of time to file a petition for a writ of certiorari was entered. The Petitioner believes that Article 3 of the United States Constitution and the 1st, 5th and 14th Amendments of the United States Constitution confer this Court jurisdiction to review the orders and the opinion in question; as do Sections 1981 and 1982 of 42 USCS and Section 1983 of 42 USCS

(by providing for relief under its "other proper proceeding for redress" clause).

CONSTITUTIONAL PROVISIONS AND
STATUTES INVOLVED IN THIS CASE

The following constitutional provisions and statutes are involved in this case.

(a) The 1st Amendment of the United States Constitution which states as follows:

Congress shall make no law respecting an establishment of religion, or preventing the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peacefully assemble, and to petition the Government for a redress of grievances.

(b) The 5th Amendment of the United States Constitution, the pertinent portion of which states as follows:

No person shall * * be deprived of life, liberty, or property, without due process of law * *

(c) Section 1 of the 14th Amendment of the United States Constitution, the pertinent

portion of which states as follows:

* * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

(d) North Carolina General Statute 1A-1, Rule 12 (b) (6) the pertinent portion of which states as follows:

(a) _____

(b) HOW PRESENTED.

Every defense in law or fact to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or a third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defense may at the option of the pleader be made by motion.

(1) _____

(6) Failure to state a claim upon which relief can be granted. _____

(e) North Carolina General Statute 1A-1,

Rule 41 (a) (1) which states as follows:

(a) Voluntary Dismissal; Effect Thereof.

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23 (c) and of any statute of this State, an action or any claim therein may be dismissed by the plaintiff without order of court (i) by filing a note of dismissal at any time before the plaintiff rests his case, or; (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this or any other state or of the United States, an action based on or including the same claim. If an action commenced within the time prescribed therefor, or any claim therein, is dismissed without prejudice under this subsection, a new action based on the same claim may be commenced within one year after such dismissal unless a stipulation filed under (ii) of this subsection shall specify a shorter time.

STATEMENT OF THE CASE

(a) Statement of Proceedings:

On December 16, 1986, the Petitioner-Plaintiff instituted an action, Pitt County 86CVS2235, against the same defendants involved in this action, claiming libel and interference with personal property rights. See Appendix, pp 12-36. No pleadings were filed in that action later than April 10, 1987 and no trial occurred. The action was voluntarily dismissed, without prejudice, on February 19, 1988. On January 25, 1989, the Petitioner-Plaintiff instituted a second action, Pitt County 89CVS151, against the same defendants involved in this action, claiming libel, false light interference with right to privacy and interference with contracts (all of which was based on alleged acts and omissions of the defendants which occurred no earlier than January 25, 1988). See Appendix, pp 12-36, 37-51. The second action (Pitt County 89CVS151) was voluntarily dismissed, without prejudice, on February 3, 1989.

The Petitioner (Plaintiff) initiated this action, Pitt County (N.C.) 89CVS249, on February 10, 1989 by filing his complaint alleging libel and/or slander (thereby raising an issue as to the rights of the defendants and his own rights pursuant to the 1st Amendment of the United States Constitution), intentional infliction of emotional distress, interference with contracts, interference with personal property rights and false light interference with right to privacy (thereby raising an issue to the rights of the defendants and his own rights pursuant to the 1st Amendment of the United States Constitution). See Appendix, pp 52-108.

On February 17, 1989, before responsive pleading by the defendants, the Petitioner-Plaintiff filed his Amended Complaint. On April 6, 1989, the defendants filed motions to dismiss, pursuant to Rule 12 (b)(6) and Rule 41 (a)(1) of the North Carolina Rules of Civil Procedure along with

their Answer To Amended Complaint and their Counterclaim. At the May 22, 1989 session of Pitt County Superior Court, the above motions to dismiss were heard before the Honorable David E. Reid, Jr., Senior Resident Superior Court Judge, Third Judicial District (N.C.). At the hearing, the Petitioner-Plaintiff opposed the dismissal, thereby raising an issue as to due process and equal protection under the laws, pursuant to the 5th and 14th Amendments of the United States Constitution. At the hearing, Judge Reid dismissed the Petitioner-Plaintiff's false light invasion of privacy claim pursuant to Rule 12 (b)(6) (because false light invasion of privacy claims are not recognized in North Carolina). Judge Reid then proceeded to dismiss all of the Petitioner-Plaintiff's other claims on the grounds that the Petitioner-Plaintiff had violated North Carolina General Statute 1A-1, Rule 41 (a)(1) by

filing this action after having filed and voluntarily dismissed two previous actions (Pitt County 86CVS2235 and Pitt County 89CVS151) which he found to be based upon or to include the same claim (s) as this action. See Appendix, pp 1 - 5 (c).

The Petitioner-Plaintiff objected to and excepted from the dismissal of his claims at the hearing. On May 26, 1989, the Petitioner-Plaintiff filed his written Objection, Exception and Notice of Appeal to the North Carolina Court of Appeals (No. 893SC957) from the Order allowing the defendants' motions to dismiss, contending that the Order is contrary to law and violates his rights to due process and equal protection under the laws, pursuant to the 5th and 14th Amendments of the United States Constitution. Filing the Notice of Appeal also continued the issue as to the rights of the defendant and the Petitioner-Plaintiff's rights in connection with his

claims for false defamation and false light invasion of privacy, pursuant to the 1st Amendment of the United States Constitution.

In the North Carolina Court of Appeals the Petitioner-Plaintiff continued the issue as to his rights and those of the defendants, pursuant to the 1st Amendment of the United States Constitution, by filing a copy of the Amended Complaint containing claims for false defamation and (false light) invasion of privacy as part of the Record On Appeal on September 8, 1989. Filing of a copy of the complaint as part of the Record On Appeal also continued the issue as to his rights to due process and equal protection of the laws, as did assigning as error (in the Record On Appeal) the Order granting the defendants' motions to dismiss on the grounds that it is both contrary to law and violates the Petitioner-Plaintiff's right to due process and equal protection of the

laws pursuant, to the 5th and 14th Amendments of the United States Constitution.

In his Brief filed in connection with his appeal to the Court of Appeals, the Petitioner-Plaintiff argued that the dismissal of his claims violates his rights to due process and equal protection of the laws pursuant to the 5th and 14th Amendments of the United States Constitution. He further argued that false light invasion of privacy should be recognized under North Carolina law and that he has some rights to privacy, pursuant to the 1st, 4th and 14th Amendments of the United States Constitution. In his North Carolina Court of Appeals Reply Brief, the Petitioner-Appellant specifically argued that he has a constitutional right to a false light invasion of privacy claim, pursuant to the 1st Amendment of the United States Constitution.

The North Carolina Court Of Appeals entered an Opinion affirming the trial

court's dismissal of all of the Petitioner-Plaintiff's claims on March 20, 1990. See Appendix, pp 6-9. The Petitioner-Plaintiff filed his Notice Of Appeal and Petition For Discretionary Review with the North Carolina Supreme Court (No. 168P90) on April 23, 1990, thereby continuing the issue as to due process and equal protection under the laws, pursuant to the 5th and 14th Amendments of the United States Constitution and the issue as to the 1st Amendment rights of the defendants and himself. In the Notice of Appeal, the Petitioner-Plaintiff specifically raises an issue as to whether or not his rights to due process and equal protection under the laws, pursuant to the 5th and 14th Amendments of the United States Constitution, have been violated by the trial court's dismissal of all of his claims and by the affirmation of the trial court's Order by the North Carolina Court of Appeals. Similarly, in the joint notice

of appeal and petition, the Petitioner-Plaintiff contends that the trial court's dismissal of his claim for false light invasion of privacy and the affirmation by the Court of Appeals of the Order dismissing that claim violates his rights to that claim, pursuant to the 1st Amendment of the United States Constitution. On June 18, 1990, the North Carolina Supreme Court entered an Order dismissing the Petitioner-Plaintiff's appeal and denying his Petition For Discretionary Review. The Court offered no findings of fact or law in doing so. See Appendix, pp 10-11.

(b) Statement of the Facts:

Many of the factual allegations appearing in the Petitioner-Plaintiff's pleadings filed in this action (Pitt County 89CVS249) also appear in the Petitioner-Plaintiff's pleadings in either Pitt County 86CVS2235 or in Pitt County 89CVS151, but none of the Petitioner-Plaintiff's factual allegations

in this action appear among his pleadings in both of those actions. All of the factual allegations in Pitt County 86CVS2235 are alleged to have occurred earlier than December 1, 1986 and none of the factual allegations in Pitt County 89CVS151 are alleged to have occurred earlier than January 21, 1988. See Appendix, pp 1-36, 37-51. There never have been any actions, other than this one and the two referred to hereinabove, in which both the Petitioner-Plaintiff and any of the defendants were involved.

Central to the Petitioner-Plaintiff's Amended Complaint in this action are the following allegations:

On December 20, 1985, The Daily Reflector, Inc. published an article concerning a malpractice action filed against the Petitioner-Plaintiff in this action and others, including a nursing home. The article describes false allegations (contained in the complaint filed in the malpractice action) which falsely defame the Petitioner-Plaintiff in this action, quotes

some of the false defamation allegations out of context and contains misleading statements which falsely defame the Petitioner-Plaintiff concerning the care he had rendered to a patient. At the time the article was published, two reporters and Defendant Taylor (the editor) knew, or should have known, that some of the false and misleading statements published were false. The defendants gave the Petitioner-Plaintiff no opportunity to rebut the false allegations in the same article in which they were published. See Appendix, pp 56-64.

The article published describes allegations contained in the complaint of the malpractice action indicating that the plaintiff in that action (the patient) was neglected over a period of several weeks by the Petitioner-Plaintiff in this action following an incident alleged to have caused a fractured femur.

The patient changed physicians 28 hours after the occurrence of the incident alleged to have caused the fracture. See Appendix, pp 57, 59-60. Before the article was published, the Petitioner-Plaintiff had informed two Daily Reflector reporters and Defendant Taylor concerning the change of physicians having occurred 28 hours after the incident alleged to have caused the patient's fractured femur and also had informed them that the fracture was not found until 21 days after the patient changed physicians. See

Appendix, pp 57-58, 59-60. The news report also contains a statement that the plaintiff in the malpractice action was seeking \$750,000 in actual damages and \$750,000 in punitive damages. The amount sought does not appear in the complaint filed in that action. See Appendix, p 62.

The Amended Complaint in this action also contains allegations that, from September 24, 1985 through June 20, 1988, the defendants engaged in a pattern of selective publication of certain materials which are biased and unfair to the Petitioner-Plaintiff and selective refusal to publish some materials favorable to the Petitioner-Plaintiff; thereby placing the Petitioner-Plaintiff in a false light in the public eye, maintaining the false light, increasing the false light and thereby interfering with his right to privacy. See Appendix, pp 53, 55, 61-63, 65-82.

REASONS FOR ALLOWANCE OF

WRIT OF CERTIORARI

(a) The Petitioner Did Not Violate Rule 41
(a)(1) Of The North Carolina Rules Of
Civil Procedure (N.C. Gen. Statute
1A-1).

In their motion to dismiss contending that the Petitioner-Plaintiff violated Rule 41 (a)(1) of the North Carolina Rules Of Civil Procedure by filing this action, the respondent-defendants contend that the Petitioner-Plaintiff had earlier filed and voluntarily dismissed two actions based on or including the same claim (s) involved in the present action. See Appendix, pp 2-4.

Rule 41 (a)(1) states as follows:

(a) Voluntary Dismissal; Effect
Thereof.

(1) By Plaintiff; by Stipulation.
Subject to the provisions of Rule 23
(c) and of any statute of this State,
an action or any claim therein may
be dismissed by the plaintiff without
order of court (i) by filing a notice

of dismissal at any time before the Plaintiff rests his case, or; (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this or any other state or of the United States, an action based on or including the same claim. If an action commenced within the time prescribed therefor, or any claim therein, is dismissed without prejudice under this subsection, a new action based on the same claim may be commenced within one year after such dismissal unless a stipulation filed under (ii) of this subsection shall specify a shorter time.

It is clear that entering a third action based on or including a claim that has twice been included in previous actions and twice voluntarily dismissed violates Rule 41 (a)(1). It is just as clear that the Petitioner-Plaintiff did not violate Rule 41 (a)(1). He filed three actions against the defendants, but no individual claim (s) appears in more than two of the actions. Under North Carolina law, the facts pleaded

in a complaint are the determining factors in deciding whether it states a claim upon which relief can be granted; the legal theory with which a complaint may be bottomed out does not determine the validity of the claim. Benton v Witt Weaver Const. Co., 28 NC App. 91, 220 SE 2d 417 (1975); Stanback v Stanback, 297 NC 181, 254 S.E. 2d 611 (1979). The demand for relief does not determine the sufficiency of a statement of a claim. To demand the wrong relief is not a crucial error. N.C. Ports Auth. v Lloyd A. Fry Roofing Co., 32 NC App. 200, 232 SE 2d 846 (1977); Stanback v Stanback, Supra. Therefore, under North Carolina law, it is not possible for two actions to contain the same claim without some of the factual allegations appearing in the pleadings of both actions. As stated on pages 13-14 hereinabove, none of the factual allegations contained in the Petitioner-Plaintiff's pleadings in this action

appear in his pleadings in both Pitt County 86CVS2235 and Pitt County 89CVS151 (both of which were voluntarily dismissed by the Petitioner-Plaintiff). Further, as indicated on page 14 hereinabove, there are no factual allegations common to the Petitioner-Plaintiff's pleadings in Pitt County 86CVS2235 and Pitt County 89CVS151. Therefore, it was impossible for the Petitioner-Plaintiff to include among his pleadings in this action any claims that he had previously included in both of his two previous actions against the defendants in this action.

It appears that the trial court and the North Carolina appellate courts were confused by the fact that Pitt County 86-CVS2235, Pitt County 89CVS151 and this action are all bottomed out with libel as a theory of relief. Those courts apparently failed to recognize that the claims in Pitt County 86CVS2235 which are bottomed out with

libel as theories of relief are based on factual allegations that do not appear in Pitt County 89CVS151 and are therefore entirely separate and different claims from the claim in Pitt County 89CVS151 which is bottomed out with libel as a theory of relief. Clearly, a defendant should not be allowed to prevail in a new action because the plaintiffs in that action now has bottomed out his claims in previous actions against the defendants with the same theory of relief two or one hundred times, provided that not more than one of the previous actions were based on factual allegations common to the new action. If complaints could properly be dismissed simply because the same theory of relief had been employed in two different actions previously voluntarily dismissed, the Petitioner-Plaintiff would have forever forfeited his right to any future claims against the defendants using libel as a theory for relief,

regardless of the fact that a new action might be based on an entirely different set of factual allegations.

(b) False Light Invasion Of Privacy Should Be Recognized As A Violation Of One's Right To Privacy, Pursuant To The 1st Amendment Of The United States Constitution.

The Amended Complaint in this action alleges a series of acts and/or omissions by the defendants relating to a controversy which engulfed the Petitioner-Plaintiff and a nursing home and which placed the Petitioner-Plaintiff in a false light in the public eye. Some of the acts and omissions alleged do not readily fit into claims for false defamation. (Some of them do not involve false statements.) The North Carolina Supreme Court has ruled that claims for false light invasion of privacy will not be recognized in this State

and that a plaintiff must recover in such situations, if at all, in an action for libel or slander. Renwick v News and Observer, 310 N.C. 312, 312 S.E. 2d 405 (1988). Clearly, that ruling ignores the ability of media outlets to place a person in a false light in the public eye through selective publication of unfavorable statements plus selective non-publication of favorable statements which would reduce the impact of the unfavorable statements published. Such a technique can do substantial harm to one's reputation without any false statements being published. Deliberately employing such smear tactics is far worse than inadvertantly publishing a false statement without actual malice.

The Petitioner-Plaintiff respectfully submits that freedom from false light invasion of privacy should be recognized as a right, pursuant to the 1st Amendment of the United States Constitution. He

further submits that the Amended Complaint in this action contains an abundance of the allegations that should be required to be proven in such claims and furnishes this Court with a good vehicle to set out the ground rules for such claims.

(c) The Dismissal Of All Of The Petitioner's Claims In Itself Violates The Petitioner's Right To Due Process And Equal Protection Under The Laws Pursuant To The 5th And 14th Amendments Of The United States Constitution, And His Right To A Claim For Unjustifiable False Defamation Which, He Submits, Should Be Recognized As Being Pursuant To The 1st Amendment Of The United States Constitution. Similarly, The Failure Of The North Carolina Appellate Courts To Restore The Claims Violates His Constitutional Rights.

The Petitioner-Plaintiff contends that his Amended Complaint contains sufficient allegations to support at least a claim for libel under North Carolina law. As argued hereinabove on pages 17-22, he submits that he did not violate Rule 41 (a) (1) of the North Carolina Rules Of Civil Procedure by filing and voluntarily dismissing two previous actions based upon or containing any claim contained in this action. The Petitioner-Plaintiff respectfully submits that the dismissal of any of his claims on the grounds that he did not comply with the provisions of Rule 41 (a) (1) violates his rights to due process and equal protection under the laws, pursuant to the 5th and 14th Amendments of the United States Constitution. He further respectfully submits that freedom from unjustifiable false defamation should be recognized as a constitutional right pursuant to the 1st Amendment of the United States Constitution and that

the instant case provides a good vehicle for such recognition.

(d) There Is Substantial Evidence That The
Petitioner-Plaintiff Has Been Damaged
By Unacceptable Bias In Both The Trial
Court And The North Carolina Appellate
Courts.

While preparing his three complaints against the defendants, the Petitioner-Plaintiff was alert to the provisions of Rule 41 (a)(1) of the North Carolina Rules Of Civil Procedure. He was careful not to include any allegations involving the same facts or involving even the same time periods in all three actions. He finds it difficult to believe that neither the trial court nor North Carolina Appellate Courts should have any trouble understanding that he did not violate the spirit or the letter of Rule 41 (a)(1). He respectfully submits

that the rulings in this action that have resulted in his being denied his right to a claim (s) recognized under North Carolina Law in themselves offer substantial evidence that he has encountered bias in both the trial court and the North Carolina Appellate Courts.

Through no fault of his own, the Petitioner-Plaintiff became deeply involved in a controversy that engulfed a nursing home where he was an attending physician and served as medical director. Eleven legal actions resulted, including 4 malpractice actions against the Petitioner-Plaintiff. (He has prevailed in all of the malpractice actions.)

In an action related to the nursing home controversy, a summary judgement in favor of a television station (based in part on absolute privilege as to news reports of judicial proceedings) was entered followed by the entry of a sanction of \$13, 450 in attorneys' fees against the

Petitioner-Plaintiff (based largely on the summary judgement entered) for having filed a frivolous complaint found to be a sham upon the Court. All matters appealed from except the entry of sanctions were improperly dismissed by a different trial court judge (who now sits on the North Carolina Court of Appeals) who had no authority to do so. It took the Petitioner-Plaintiff 22 months to get the North Carolina Court of Appeals to restore his right to appeal as to the summary judgement and other issues improperly dismissed. The Summary Judgement issue and the sanctions issue, both first appealed 38 months ago, have still not been resolved and it appears that several more months will pass before the Court of Appeals rules on them. It concerns the Petitioner-Plaintiff that a young attorney who did much of the legal work for the defendants in that action accepted a job as a law clerk for Court of Appeals Judge Edward K. Greene who

was on the panel in that case, that counsel for the defendants made a motion that Judge Greene recuse himself in that action and that he refused to do so. It concerns the Petitioner-Plaintiff that Judge Greene, after having refused to recuse himself in the above referred to case, was on the panel which heard another case involving the Petitioner-Plaintiff and also a member of the panel that heard the instant case. All of the Petitioner-Plaintiff's claims in the second case were dismissed by the trial court as failing to state a claim upon which relief can be granted; the Court of Appeals affirmed the dismissal; the North Carolina Supreme Court dismissed the Petitioner-Plaintiff's Appeal and denied his Petition For Writ Of Certiorari. The Petitioner-Plaintiff's Petition For Writ Of Certiorari in that case addressed to the United States Supreme Court, was docketed in this Court on July 6, 1990 (No. 90-87). The Petitioner-

Plaintiff finds the rulings in that case to be almost unbelievable. He has consulted several attorneys, none of whom have indicated that they believe the complaint fails to state a claim upon which relief can be granted.

It is the contention of the Petitioner-Plaintiff that his rights have been violated by multiple erroneous rulings entered as a result of bias against him and/or his causes of action in both the trial court and the North Carolina Court of Appeals. He further contends that, as a result of his complaints of bias in the Court of Appeals, some bias against him may have spilled over into the North Carolina Supreme Court. He submits that the entry of any erroneous decision, in which bias against him or his causes of action was a factor, violated his rights to due process and equal protection under the laws, pursuant to the 5th and 14th Amendments of the United States Constitution.

The Petitioner-Plaintiff worries because, in two actions in which he genuinely believes his constitutional rights have been abused, the final appeal of right was determined to lie in the North Carolina Court of Appeals, which he considers to be deeply biased against him and his causes of action. If he is correct as to his assessment of bias against him in that court, none of the rulings against him by that court should be allowed to stand without further review. In this action and another one referred to hereinabove, the North Carolina Supreme Court has refused to undertake such review.

The Petitioner-Plaintiff respectfully submits that the allowance of only a single review of right, with that being by a three judge panel in an appellate court inferior to a State's highest court, does not provide an adequate safeguard to ensure that state appellate courts adequately fulfill their duties relating to due process and equal

protection under the laws pursuant to the 5th and 14th Amendments of the United States Constitution. That is especially true when the three judge panel decides that there will be no oral argument and determines that the decision will not be published, (as the panel did in this case).

(e) The Petitioner-Plaintiff Deserves Fair Treatment By The Courts.

The Petitioner-Plaintiff, now age 66 years, submits that he is a competent physician who has practiced family medicine for 35 years, mostly in small towns. He received a Bronze Star and a Letter of Commendation with a Combat "V" in connection with his service as a medical officer with the First Marine Division during the Korean War. He has served as president of two county medical societies. The controversy which engulfed University Nursing Center, the four related unjustified malpractice

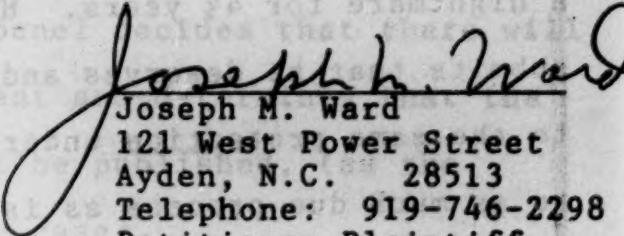
actions and the other interlocked legal actions related to false defamation of him by several media outlets have made his life a nightmare for 4½ years. He respectfully submits that he deserves and is entitled to the same protection under the laws and to as much due process as is afforded other citizens, including criminals. He respectfully submits that in the instant case, he has not received such treatment.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that the Court issue a writ of certiorari to review the Opinion entered in the North Carolina Court Of Appeals in this action and, if appropriate, to review the dismissal of the Petitioner's Appeal to the North Carolina Supreme Court and the denial of his Petition For Writ Of Certiorari by that Court plus the Order dismissing all of the Petitioner-Plaintiff's claims that was entered in the

trial court.

Respectfully submitted, this the 12th
day of September, 1990.


Joseph M. Ward
121 West Power Street
Ayden, N.C. 28513
Telephone: 919-746-2298
Petitioner-Plaintiff

EDITOR'S NOTE:

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200-1044 (4)

Supreme Court, U.S.
FILED
SEP 24 1990
J. F. ABRAHAM, JR.
CLERK

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER 1990 TERM

JOSEPH M. WARD

PETITIONER (PLAINTIFF)

V

THE DAILY REFLECTOR, INC.

ALVIN TAYLOR

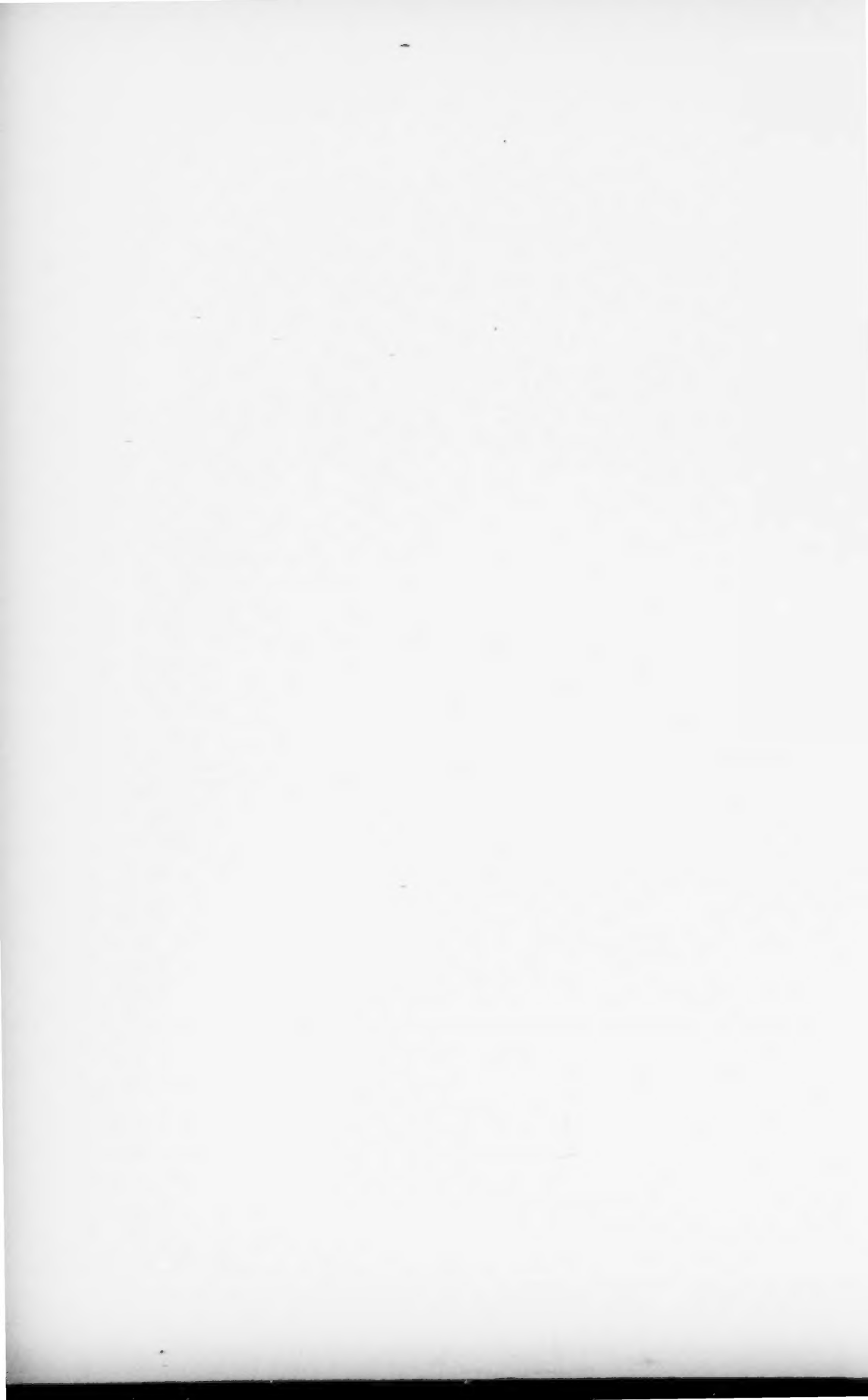
RESPONDENTS (DEFENDANTS)

PETITION FOR WRIT OF CERTIORARI TO
THE NORTH CAROLINA SUPREME COURT

APPENDIX TO PETITION FOR
WRIT OF CERTIORARI

JOSEPH M. WARD
PRO SE
121 WEST POWER STREET
AYDEN, N.C. 28513
TELEPHONE: (919) 746-2298

110 p



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NORTH CAROLINA

FILE NO. 89 CVS 249

COUNTY OF PITT

IN THE GENERAL COURT

OF JUSTICE SUPERIOR

COURT DIVISION

JOSEPH M. WARD,
Plaintiff

vs.

THE DAILY REFLECTOR, INC.
AND ALVIN TAYLOR,
Defendants

ORDER

THIS CAUSE coming on to be heard before the undersigned Judge Presiding at the May 22, 1989 Session of Pitt County Superior Court (Civil) at Greenville, North Carolina, and being heard by the Court upon each of the following designated Motions, to wit:

FIRST: Plaintiff's MOTION TO DISMISS the counterclaim filed by defendants for failure to state a claim for which relief can be granted pursuant to N.C.G.S. 1A-1, Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, and which MOTION TO DISMISS is contained in plaintiff's MOTION TO DISMISS, REPLY TO DEFENDANTS' COUNTERCLAIM DATED AND

filed April 12, 1989.

SECOND: Defendants' FIRST MOTION TO DISMISS as contained in DEFENDANTS' MOTIONS; ANSWER TO AMENDED COMPLAINT; COUNTERCLAIM, AND DEMAND FOR JURY TRIAL dated April 5, 1989, filed April 6, 1989, and which FIRST, MOTION TO DISMISS reads verbatim as follows:

Under and pursuant to the provisions of N.C.G.S. 1A-1, Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, the defendants, and each of them, move the Court that this cause be dismissed for failure to state a claim upon which relief can be granted.

THIRD: Defendants' THIRD MOTION TO DISMISS as contained in DEFENDANTS' MOTIONS; ANSWER TO AMENDED COMPLAINT; COUNTERCLAIM, AND DEMAND FOR JURY TRIAL dated April 5, 1989, filed April 6, 1989, and which THIRD MOTION TO DISMISS reads verbatim as follows:

The defendants move the Court that this action be dismissed on the basis that plaintiff has

heretofore instituted two (2) separate actions based on or including the same claim(s) involved in the present action, to wit: Case No. 86 CvS 2235 instituted in the Superior Court of Pitt County, North Carolina, on December 16, 1986 and Case No. 89 CvS 151 instituted in the Superior Court of Pitt County, North Carolina, on January 31, 1989, the file in both of said suits being incorporated herein by reference; that pursuant to the provisions of N.C.G.S. 1A-1, Rule 41(a)(1), plaintiff filed Notices of Dismissal in Case No. 86 CvS 2235 on February 19, 1988 and in Case No. 89 CvS 151 on February 3, 1989; that pursuant to the provisions of N.C.G.S. 1A-1, Rule 41(a)(1), plaintiff's second Notice of Dismissal, filed February 3, 1989 in Case No. 89 CvS 151, operated as an adjudication of plaintiff's claim(s) upon the merits and same is specifically plead

as a bar to plaintiff's right to maintain the present action.

And upon the hearing of the above-designated MOTIONS plaintiff being personally present and participating, in propria persona, and defendants' counsel, to wit: L.W. Gaylord, Jr and Vernon G. Snyder, III, Attorneys at Law, Greenville, North Carolina, both being personally present and participating;

And after reviewing the record in this cause, to wit: File No. 89 CvS 249, the record in case No. 86 CvS 2235, and the record in case No. 89 CvS 151, and hearing the argument of plaintiff in propria persona, and the argument of L.W. Gaylord, Jr. and Vernon G. Snyder, III, counsel for defendants, the Court being of the opinion that plaintiff's Motion as set forth in paragraph FIRST, above should be denied, and that each of the defendants' Motions as set forth in paragraphs SECOND and THIRD, above, should be allowed and granted;

IT IS NOW, THEREFORE, ORDERED, ADJUDGED, AND
DECREED:

FIRST: That plaintiff's Motion as set forth
in paragraph FIRST, above, be and same is
hereby denied.

SECOND: That each of the Motions filed by
defendants and as set forth in paragraphs
SECOND and THIRD, above, be and same is here-
by allowed and granted.

THIRD: That plaintiff's action be and same
is hereby dismissed, costs of Court to be
taxed against plaintiff.

This 25th day of May, 1989.

S/ David E. Reid, Jr.

David E. Reid, Jr.
Judge Presiding at the
May 22, 1989 Session of
Pitt County Superior
Court (Civil)

NORTH CAROLINA

PITT COUNTY

JOSEPH M. WARD

IN THE GENERAL COURT
OF JUSTICE SUPERIOR
COURT DIVISION
FILE NO. 89 CVS 249

vs.

AMENDMENT TO ORDER

THE DAILY REFLECTOR, INC.
ALVIN TAYLOR

The Order entered in open court during the May 22, 1989 Session of Pitt County Superior Court by the Honorable David E. Reid, J. and signed on May 25, 1989 is hereby amended as follows beginning with the paragraph at the middle of page # 3 which opens with the words, "And after reviewing the record _____" and continuing until the end of the Order:

And after reviewing the record in this cause, to wit: File No. 89 CVS 249, the record in case No. 86 CVS 2235, and the record in case No. 89 CVS 151, and hearing the argument of Plaintiff in propria persona and the argument of L.W. Gaylord, Jr. and Vernon G. Snyder, III, counsel for the defendants, the court

being of the opinion that the Plaintiff's motion as set forth in paragraph FIRST, above, should be denied, and that the defendants' motion as set forth in paragraph SECOND above be allowed and granted as to the Plaintiff's false light invasion of privacy claim, and that the defendant's motion set out in paragraph THIRD above should be allowed and granted;

IT IS NOW, THEREFORE, ORDERED,
ADJUDGED AND DECREED:

FIRST: That Plaintiff's Motion as set forth in paragraph FIRST, above, be and the same is hereby denied.

SECOND: That the 12 (b) (6) motion filed by the defendants and set forth in paragraph SECOND above, be and same is hereby allowed and granted in part, to wit: as to the Plaintiff's false light invasion of privacy claim.

THIRD: That the motion filed by the defendants and set forth in paragraph

THIRD, above, be and same is hereby allowed and granted.

FOURTH: That Plaintiff's action be and same is hereby dismissed, costs of Court to be taxed against Plaintiff.

In open court, at the hearing on the defendants' motions to dismiss, the Plaintiff objected to and excepted from the entry of this Order.

This the 18th day of August, 1989.

S/ David E. Reid, J .
David E. Reid, Jr.
Senior Resident
Superior Court Judge

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 1990

JOSEPH M. WARD

v.

THE DAILY REFLECTOR, INC.
and ALVIN TAYLOR

Pitt County
No. 89CVS249

Appeal by plaintiff from order entered 25 May 1989 in Pitt County Superior Court by Reid, David E., Jr., Judge. Heard in the Court of Appeals 13 March 1990.

On 16, December 1986, plaintiff instituted case No. 86CVS2235 in Pitt County Superior Court, seeking recovery against the above named defendants on claims of libel. Plaintiff voluntarily dismissed that action on 19 February 1988.

On 31, January 1989, plaintiff instituted case No. 89CVS151 in Pitt County Superior Court against these same defendants, also on claims of libel, but adding a claim for invasion of privacy based on allegations that defendants published material which placed

plaintiff in a "false light." Plaintiff voluntarily dismissed that second action on 3 February 1989.

On 10 February 1989, plaintiff instituted the present case No. 89CVS249 in Pitt County Superior Court against these same defendants. By his amended complaint filed 17 February 1989, plaintiff again brought forward claims for libel and "false light" invasion of privacy, incorporating by reference the complaints filed in the two previous actions.

In opposition to plaintiff's claim for "false light" invasion of privacy, defendants interposed a motion to dismiss under N.C. R. Civ. P., Rule 12(b)(6), for failure to state a claim upon which relief could be granted. In opposition to plaintiff's claims for libel, defendants interposed a motion to dismiss under N.C. R. Civ. P., Rule 41(a)(1) in that plaintiff's second voluntary dismissal, filed on 3 February 1989 in case No. 89CVS151, operated as an adjudication on

the merits of these claims and a bar to subsequent actions predicated thereon.

The trial court, following a hearing, allowed defendants' motions. Plaintiff appeals.

Joseph M. Ward, pro se.

Gaylord, Singleton, McNally, Strickland and Snyder, by Vernon G. Snyder III and Louis W. Gaylord, Jr., for defendant-appellees.

WELLS, Judge.

Our review of the record, transcript, and briefs convinces us that the trial court's order is correct in all respects and should be affirmed.

Regarding the trial court's dismissal of plaintiff's claim for "false light" invasion of privacy, North Carolina does not recognize such a cause of action. Renwick v. News and Observer, 310 N.C. 312, 312 S.E.2d 405, cert. denied, 469 U.S. 858, 105 S.Ct. 187 (1984) (cited with approval in Hall v. Post, 323 N.C. 259, 372 S.E.2d 711 (1988)).

Plaintiff's complaint thus fails to state a claim upon which relief can be granted, and defendants' 12(b)(6) motion was therefore properly allowed with respect to this theory of recovery.

Regarding the trial court's dismissal of plaintiff's claims for libel, Rule 41(a)(1) of the North Carolina Rules of Civil Procedure provides that "a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court . . . an action based on or including the same claim." Plaintiff filed two previous actions asserting claims for libel against these defendants. He voluntarily dismissed both. Plaintiff is therefore barred from proceeding in the present action.

Affirmed.

Judges EAGLES and GREENE concur.

Report per Rule 30(e).

SUPREME COURT OF NORTH CAROLINA

JOSEPH M. WARD

v.

THE DAILY REFLECTOR, INC.
ALVIN TAYLOR

From Pitt
(893SC957)

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals filed by the Plaintiff in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Defendants; and upon consideration of the petition for discretionary review of the decision of the North Carolina Court of Appeals, filed by Plaintiff pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is

"Allowed by order of the Court
in conference, this the 13th
day of June 1990.

s/ Webb, J.
For the Court"

The Petition for Discretionary Review is:

"Denied by order of the Court
in conference, this the 13th
day of June 1990.

s/ Webb, J.
For the Court"

Upon consideration of the petition for discretionary review as to additional questions filed by the Defendants in this matter pursuant to G.S. 7A-31 and Appellate Rule 16(b), the following order was entered and is hereby certified to the North Carolina Court of Appeals: the petition for discretionary review as to additional issues is

"Denied by order of the Court in conference, this the 13th day of June 1990.

s/ Webb, J.
For the Court"

Defendants' motion for sanctions based on frivolous appeal:

"Denied by order of the Court in conference, this the 13th day of June 1990.

s/ Webb, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 18th day of June 1990.

J. GREGORY WALLACE
Clerk of the Supreme
Court

S/ Peggy N. Byrd

Assistant Clerk

Copy to:

North Carolina Court of Appeals

Mr. Joseph M. Ward, pro se

Gaylord, Singleton, McNally, Strickland &
Snyder, Attorneys at Law, For the Defendants

Mr. Ralph A. White, Appellate Court Reporter
West Publishing Company
Mead Data Corporation

NORTH CAROLINA

IN THE GENERAL COURT
OF JUSTICE SUPERIOR
COURT DIVISION
FILE NO. 86-CVS-2235

JOSEPH M. WARD

Plaintiff

V.

AMENDED COMPLAINT
AND DEMAND FOR
JURY TRIAL

THE DAILY REFLECTOR,
INC. and
ALVIN TAYLOR
Defendants

NOW COMES the Plaintiff before responsive pleadings by any of the Defendants and amends his Complaint. The Plaintiff, complaining of the Defendants alleges and states as follows:

THE PARTIES

1. The Plaintiff is a physician duly licensed to practice medicine in North Carolina. The Plaintiff is a resident of Pitt County, North Carolina. He practices family medicine in Pitt County and serves as medical director of University Nursing Center in Greenville, N.C.

2. Defendant The Daily Reflector, Inc., hereinafter referred to as the Defendant Newspaper at times, is a North Carolina

Corporation with its principle offices located in Greenville, N.C. and which publishes a newspaper named The Daily Reflector, hereinafter referred to as the Newspaper at times.

3. Defendant Alvin Taylor, hereinafter referred to as Defendant Taylor at times, is the editor of the Daily Reflector.

THE FACTS

4. On September 24, 1985, the Defendant Newspaper published an article reporting a meeting of the Pitt County Nursing Home Community Advisory Committee (hereinafter referred to as the Committee at times) at which complaints of some relatives of some University Nursing Center residents were heard. This article was biased and unfair to University Nursing Center and to some physicians attending residents there, including the Plaintiff.

5. On October 31, 1985, the Committee resigned after its members became concerned following the Plaintiff's complaints to the

Mideast Commission concerning unlawful actions of the Committee.

6. At the time of their resignation, both the Committee and the Pitt Board of County Commissioners were aware, or should have been aware, that the Committee had been violating North Carolina statutory law in connection with handling complaints from some family members concerning the care of some of their relatives who were residents at University Nursing Center and that the person who had complained to the Mideast Commission was the Plaintiff.

7. Following the Committee's resignation, described under #5 hereinabove, the Daily Reflector published articles on November 3, 1985 and November 5, 1985 and an editorial on November 11, 1985 supporting the Committee, all of which were biased and unfair to University Nursing Center and the Plaintiff. On information and belief, at the time of the first of these articles was published and thereafter, the Newspaper made

no effort, or insufficient effort, to ascertain enough of the facts surrounding the resignation of the Committee so that a fair and unbiased account of the resignation could be published.

8. On or about November 3, 1985, the plaintiff telephoned Stuart Savage, a reporter with the newspaper, and told him numerous facts and details related to the controversy surrounding University Nursing Center and the Pitt County Nursing Home Community Advisory Committee. The Plaintiff explained that the Committee had been exceeding their statutory authority in connection with their actions related to University Nursing Center. In particular, the Plaintiff explained that the Committee had no legal authority to hold public hearings concerning the care of residents at a nursing home. During the conversation, the Plaintiff furnished the reporter with many details concerning a malpractice action brought against University Nursing Center

and the Plaintiff in this action by Josephine House, a former resident at University Nursing Center. At that time, the Complaint in that action had not been filed. The Plaintiff explained to the reporter that Josephine House had received an apparent minor injury as a result of an incident at the nursing home on February 26, 1985, that the Plaintiff examined Josephine House on the morning of February 27, 1985 and found no evidence of serious injury, that Josephine House dismissed the Plaintiff as her attending physician on February 27, 1985 and that her new attending physician examined her on the evening of February 27, 1985 and found no evidence of serious injury. Further, the Plaintiff explained that Josephine House's new attending physician had next visited her 17 days later and found an area of bluish discoloration above her right knee, that the physician decided to seek an orthopedic consult, that this consultation did not occur until four days later,

this being 21 days after Josephine House had changed physicians. The Plaintiff further explained that the consultant ordered an x-ray and found Josephine House's right femur to be fractured a short distance above the knee, and that it was impossible to determine for certain when the fracture occurred. Further, the Plaintiff explained to the reporter that the physician who had Josephine House under her care for 21 days before the fracture was discovered was not a defendant in the malpractice action brought by Josephine House while the Plaintiff in this action, who had cared for Josephine House for approximately 28 hours after the hereinabove described injury occurred, was a defendant in that action. Further, the Plaintiff informed the reporter concerning facts which support a contention that Josephine House's brother-in-law, Frank House, had developed personal animosity toward the Plaintiff before the fracture of Josephine House's femur occurred and the

facts which support a contention that Frank House had developed animosity toward University Nursing Center and its administrator, Kyle Dilday before Josephine House's malpractice action was filed. Further, the Plaintiff told the reporter that there was considerable evidence that Frank House had solicited family members of University Nursing Center residents to register complaints with the Pitt County Nursing Home Community Advisory Committee.

9. During a visit to the Daily Reflector in December, 1985, the Plaintiff discussed a proposed letter to the editor, submitted to the Daily Reflector by him on or about November 16, 1985, with reporter Carol Tyer and Defendant Taylor. The Plaintiff informed both Carol Tyer and Defendant Taylor concerning details related to his contention that the Committee described under #4 hereinabove had been exceeding its statutory authority. The Plaintiff informed both Tyer and Defendant Taylor concerning

the oddity of the Plaintiff being sued regarding his care for about 28 hours after an incident which may have caused a fracture of Josephine House's right femur, while the physician who cared for her for 21 days before a fracture was found was not a defendant in that action. The Plaintiff explained to both of them that these circumstances were probably due to the fact that Frank House was upset with University Nursing Center, Mr. Kyle Dilday and the Plaintiff. The Plaintiff also offered facts supporting a contention that personal animosity against University Nursing Center, Kyle Dilday and the Plaintiff was a motivating factor in a campaign that Frank House had launched against University Nursing Center and that personal animosity toward the Plaintiff on the part of Frank House might explain the oddity of the Plaintiff being a defendant in Josephine House's malpractice action while the physician who replaced the Plaintiff was not a defendant in that action. The

Defendant Newspaper could have easily confirmed that Frank House did have personal animosity directed against University Nursing Center, Kyle Dilday and the Plaintiff.

10. On December 16, 1985, the Daily Reflector, after considerable editing, printed the letter to the editor described under #9 hereinabove. The Newspaper refused to let the Plaintiff as much as suggest any personal reason (s) why Frank House was being so vigorous in his activities directed against University Nursing Center.

11. On December 20, 1985, the Defendant Newspaper published an article concerning the malpractice action filed by Josephine House against University Nursing Center, Kyle Dilday and the Plaintiff in this action. This article describes false allegations contained in the Complaint which defame the Plaintiff and quotes some of the false defamatory allegations out of context and contains misleading statements which defame the plaintiff concerning the professional

care rendered to Josephine House by the Plaintiff. The published false and misleading statements are detailed in ATTACHMENT A which is incorporated herein by reference as part of this Complaint. The Defendant Newspaper's reporters Carol Tyer and Stuart Savage plus Defendant Taylor knew, or should have known, at the time the false and misleading statements which defame the Plaintiff were published, that they are false. Further the Defendant Newspaper failed to contact the Plaintiff before publication of the false and misleading statements which defame the Plaintiff in order to give the Plaintiff an opportunity to rebut the false statements in the same article in which they were published. Further, the false statements contained in the Complaint in that action which defame the Plaintiff were published out of context and with omission of a statement contained in the Complaint which was favorable to the Plaintiff in this action. Further, the Defendant Newspaper

refused to retract any of the statements described in ATTACHMENT A which are false or misleading and which defame the Plaintiff.

12. On information and belief, after the Pitt County Nursing Home Community Advisory Committee resigned on October 31, 1935, Frank House shifted his complaints concerning University Nursing Center to the North Carolina Department of Facility Services and to the Pitt County Department of Social Services. On information and belief, he solicited and obtained help from Edward N. Warren, member of the North Carolina House of Representatives. After none of these acts achieved his objectives, Frank House along with Carolyn James entered a class action suit against University Nursing Center, Mr. Kyle Dilday and others, not including the Plaintiff in this action, on April 8, 1986. Before the class action was entered, the Plaintiff had been so well identified by the media as being medical director at University Nursing Center that many citizens in eastern

North Carolina reasonably would be expected to construe any criticism of that facility to also be criticism of the Plaintiff.

13. On July 15, 1986, the Defendant Newspaper published a letter to the editor signed by Frank House which is highly critical of nursing homes in general and also critical of the North Carolina Department of Facility Services. In view of Frank House's past activities, it was immediately clear to the Plaintiff that two of Frank House's main targets in this letter are University Nursing Center and the Plaintiff. Under the circumstances, the Plaintiff again felt compelled to try to inform the public concerning facts which support a contention that Frank House did have personal animosity against University Nursing Center and the Plaintiff. The Plaintiff prepared a letter to the Editor critical of Frank House's actions and submitted it to the Defendant Newspaper. In this letter, the Plaintiff states facts which support a contention that Frank

House had personal animosity against University Nursing Center and the Plaintiff and which support a contention that such personal animosity was a factor in connection with some of Frank House's acts directed against University Nursing Center. The Defendant Newspaper refused to publish this letter in its Public Forum or as a paid opinion of the Plaintiff. During his oral deposition taken in Pitt County 86-CVS-1309 on November 21, 1986, Frank House gave testimony which supports a contention that he has personal animosity directed against the Plaintiff in this action and further testified that he does not want the Plaintiff to continue as Medical Director at the University Nursing Center for personal reasons.

14. Since July, 1986, the Daily Reflector has published several articles concerning University Nursing Center, including some reporting on the progress of the hereinabove described class action brought by Frank House and Carolyn James against the

nursing home and others. None of these articles contains any statement indicating or suggesting that personal animosity against the nursing home and/or the Plaintiff may be a motivating factor in Frank House's continuing acts directed against University Nursing Center and, through the Plaintiff's relationship with the nursing home, directed against the Plaintiff. The Plaintiff has identified those statements published and the omissions since December 15, 1985 which together distort the truth and falsely defame the Plaintiff in ATTACHMENT B which is incorporated herein by reference as a part of this Complaint.

15. Defendant Taylor, reporters Carol Tyer and Stuart Savage were acting as employees or agents of the Defendant Newspaper at the time of all acts and/or omissions described hereinabove occurred.

16. The Defendant Newspaper is responsible for any wrongful acts and/or omissions of its employees as Respondeat Superior.

17. The Defendant Newspaper and its employees have an obligation to the public which requires that, if they elect to report an event or an occurrence, they make a reasonable effort to report such event or occurrence with reasonable accuracy and reasonable fairness to all persons and other entities involved. On information and belief, due at least partly to efforts to maintain or increase advertising revenues, the Defendant Newspaper and Defendant Taylor failed to fulfill this obligation.

18. As Medical Director of University Nursing Center since 1982 and as the attending physician of 50-60 residents of that facility, the Plaintiff has been and is so closely identified with University Nursing Center that any statement falsely defamatory to University Nursing Center concerning care provided to residents by that facility which is widely published can be fairly construed to be falsely defamatory to the Plaintiff. This set of circumstances has

existed at least since January 1, 1985.

FIRST CLAIM FOR RELIEF

19. Plaintiff realleges and incorporates herein by reference paragraphs 1-18 above, ATTACHMENT A and ATTACHMENT B.

20. The publication of out of contest false and/or misleading statements concerning professional health care services provided by the Plaintiff and/or University Nursing Center to Josephine House, referred to in paragraph 11 hereinabove and detailed in ATTACHMENT A, defamed the Plaintiff, demeaned the professional reputation of the Plaintiff and libeled him per se.

21. The publication of the libelous statements referred to in paragraph 20 hereinabove was done with actual malice as evidenced by the fact that they were published when Editor Taylor and two reporters knew, or should have known, that they were probably false and as evidenced by the refusal of the Defendant Newspaper to retract the false and misleading statements upon demand.

Failure of the Defendant Newspaper, Editor Taylor and/or other employees to furnish the Plaintiff with an opportunity to rebut the false defamatory statements in the same article in which they appeared is also evidence of actual malice. The statements which libel the Plaintiff were published with wanton and willful disregard of the Plaintiff's rights by the Defendant Newspaper, Editor Taylor and/or other employees of the Defendant Newspaper. The failure of the Defendant Newspaper and Editor Taylor to fairly report the controversy involving the Committee and University Nursing Center and the continuing failure of the Defendant Newspaper and Editor Taylor to fairly report the Plaintiff's contentions regarding the forces motivating Frank House in his acts directed against University Nursing Center constitute aggravating circumstances in this First Claim For Relief.

22. As a result of the libelous statements published by the Defendant Newspaper

referred to in paragraph 20 hereinabove, the Plaintiff has suffered special damages in the form of the cost of secretarial help and office supplies and lost professional fees. The Plaintiff has also suffered general damages including damage to his professional reputation, loss of future professional fees, increased migraine headaches, increased esophageal reflux, increased gout and severe emotional distress. The Plaintiff is entitled to punitive damages for the injuries he has suffered in connection with this claim.

SECOND CLAIM FOR RELIEF

23. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 22 above, ATTACHMENT A and ATTACHMENT B.

24. As described hereinabove, the activities of Frank House, plus activities triggered by him, directed against University Nursing Center and/or the Plaintiff have been reported by the Defendant Newspaper over a period of time beginning in September 1985

and continuing until recently. The Defendant Newspaper and Defendant Taylor have failed to fairly report the Plaintiff's contentions regarding the forces motivating Frank House in his acts directed against University Nursing Center and have refused to publish as much as a hint that personal animosity on the part of Frank House was, or might be, a motivating factor in connection with Frank House's activities and the activities triggered by him that are directed against University Nursing Center and/or the Plaintiff. As stated hereinabove, the Defendant Newspaper, Editor Taylor and some of its reporters knew, or should have known, that such animosity on the part of Frank House existed. The set of circumstances described herein constitutes a continuing deliberate misrepresentation and distortion of facts which falsely defames the Plaintiff and demeans him professionally. This continuing false defamation libels the Plaintiff per se.

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25. The set of circumstances described in paragraph 24 hereinabove which are libelous to the Plaintiff have occurred as a result of actual malice on the part of the Defendant Newspaper, Defendant Taylor and/or other employees of the Defendant Newspaper. The set of circumstances occurred with wanton and willful disregard of the Plaintiff's rights by the Defendant newspaper Editor Taylor, and/or other employees of the Defendant Newspaper. The failure of the Defendant Newspaper and Editor Taylor to fairly report the controversy involving the Pitt County Nursing home Community Advisory Committee and University Nursing Center constitutes an aggravating circumstance in this Second Claim For Relief.

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26. As a result of the libelous misrepresentation and distortion of facts published by the Defendant Newspaper which are described under #24 hereinabove, the Plaintiff has suffered special damages in the form of the cost of secretarial help and

office supplies and lost professional fees. Further, Plaintiff has also suffered general damages including damage to his professional reputation, loss of future professional fees increased migraine headaches, increased esophageal reflux, increased gout and severe emotional distress. The Plaintiff is entitled to punitive damages for the injuries he has suffered in connection with this claim.

THIRD CLAIM FOR RELIEF

27. The Plaintiff realleges and incorporates herein by reference paragraphs 1 through 26 above, ATTACHMENT A and ATTACHMENT B.

28. Due to the wrongful acts and/or omissions of the Defendant Newspaper, Defendant Taylor and/or some other employees of the Defendant Newspaper referred to in paragraphs 4, 7, 10, 11, 13, 14, 20 and 24 hereinabove and in ATTACHMENTS A and B, interference with the Plaintiff's personal property right to practice medicine has occurred.

29. The interference with the Plaintiff's personal property right to practice medicine referred to in paragraph 28 hereinabove occurred due to actual malice on the part of the Defendant Newspaper, Editor Taylor and/or some other employees of the Defendant Newspaper. The wrongful acts and/or omissions which interfered with the Plaintiff's personal property right to practice medicine were wanton and willful. The persistent pattern of wrongful acts and/or omissions by the Defendant Newspaper, Editor Taylor and/or other employees of the Defendant Newspaper, after the Plaintiff had alerted Defendant Taylor and two reporters regarding certain important facts which should have made them cautious, is an aggravating circumstance in this Third Claim For Relief.

30. The Plaintiff has suffered special damages from the interference with his personal property rights in the form of lost professional fees and in the form of

secretarial expense and office supplies expended in an effort to minimize the damage caused to his property right to practice medicine through the wrongful interference. Further the Plaintiff has suffered general damages including damage to his professional reputation, the loss of future professional fees, increased migraine headaches, increased esophageal reflux, increased gout and severe emotional distress. The Plaintiff is entitled to punitive damages for the injuries he has suffered in connection with this claim.

DEMAND FOR JURY TRIAL

31. The Plaintiff demands a jury trial as to all matters properly triable thereby.

WHEREFORE, the Plaintiff respectfully prays the Court:

1. To enter a judgement against Defendant The Daily Reflector, Inc. and in favor of the Plaintiff in the sum of ONE THOUSAND DOLLARS (\$1, 000.00) in special damages, in the sum of ONE MILLION

DOLLARS (\$1,000,000.00) in general damages
and in the sum of FIVE MILLION DOLLARS
(\$5,000,000.00) in punitive damages.

2. To enter a judgement against Defendant Alvin Taylor and in favor of the Plaintiff in the sum of ONE HUNDRED DOLLARS (\$ 100.00) in special damages, in the sum of ONE THOUSAND DOLLARS (\$ 1,000.00) in general damages and in the sum of TWO THOUSAND DOLLARS (\$ 2,000.00) in punitive damages.

3. That the costs of this action be paid by the Defendants.

4. For such other relief as the Court deems just and proper.

This the 10th day of February, 1987.

S/ Joseph M. Ward
Joseph M. Ward
121 West Power Street
Ayden, N.C. 28513
Telephone: 919-746-3191

NORTH CAROLINA

PITT COUNTY

JOSEPH M. WARD, first being duly sworn,
deposes and says:

That he is the plaintiff in the foregoing action; that he has read the foregoing Amended Complaint And Demand For Jury Trial and that the contents of said Amended Complaint And Demand For Jury Trial are true to his own knowledge except as to those matters stated on information and belief and and as to those matters he believes them to be true.

S/ JOSEPH M. WARD

JOSEPH M. WARD

Sworn to and subscribed before me this the 10th day of February, 1987.

S/Eliza J. Richardson

NOTARY PUBLIC

My Commission Expires: Dec. 17, 1987

Attached letters incorporated into Complaint are being omitted from Appendix.

NORTH CAROLINA

IN THE GENERAL
COURT OF JUSTICE
SUPERIOR COURT
DIVISION

JOSEPH M. WARD
Plaintiff

FILE NO. 89 CVS 151

vs.

COMPLAINT AND DEMAND
FOR JURY TRIAL

THE DAILY REFLECTOR, INC.
and ALVIN TAYLOR
Defendants

The Plaintiff, complaining of the Defendants, alleges and states as follows:

THE PARTIES

1. The Plaintiff is a physician duly licensed to practice medicine in North Carolina. The Plaintiff is a resident of Pitt County, North Carolina. The Plaintiff practices family medicine in Pitt County. The Plaintiff served as Medical Director of University Nursing Center in Greenville, N.C. from about July 1, 1981 until May 16, 1987. The Plaintiff has been (and still is) an attending physician at University Nursing Center since about July 1, 1981.

2. Defendant The Daily Reflector,

Inc., hereinafter referred to as the Defendant Newspaper at times, is a North Carolina Corporation with its principle offices located in Greenville, N.C. and which publishes a newspaper named The Daily Reflector, hereinafter referred to as the Newspaper at times.

3. Defendant Alvin Taylor, hereinafter referred to as Defendant Taylor at times, is the Managing Editor of The Daily Reflector. On information and belief, Defendant Taylor is responsible for day to day decisions regarding news coverage, editorial coverage and Letters to the Editor.

THE FACTS

4. On January 21, 1988, the Plaintiff served a notice of voluntary dismissal, without prejudice, of his claims against Defendant Roy H. Park Broadcasting Co., and Roy Hardee in Pitt County 88 CVS 2243 during a hearing on those defendants' Motion For Summary Judgement. The Court declared the notice invalid on the same date.

5. On January 22, 1988, the Court entered an interlocutory summary judgement in favor of Defendants Roy H. Park Broadcasting Co., Inc. and Roy Hardee.

6. On January 25, 1988, the Defendant Newspaper published a news report which falsely states that a civil suit brought by the Plaintiff against Roy H. Park Broadcasting Co. and Roy Hardee was dismissed by Judge James D. Llewellyn. The article contains no reference to the Plaintiff-Appellant's Notice Of Dismissal referred to under Paragraph 4 hereinabove. The headline and the statement that the suit was dismissed falsely defame the Plaintiff and place him in a false light in the public eye and keeps him there. The omission of information relating to the denial of the Plaintiff's Notice Of Dismissal and the failure to report that a summary judgement had been entered and the oddity of the judgement entered being based in part on absolute privilege as to news reports falsely

defames the plaintiff and placed him in a false light in the public eye and keeps him there. A copy of the article, Exhibit A, is attached and incorporated herein as if set out herein in full.

7. On January 28, 1988, the Plaintiff hand delivered to Defendant Alvin Taylor a letter of rebuttal addressed to the Editor of The Daily Reflector, Inc., seeking publication of the letter. A copy of this letter, Exhibit B, is attached and incorporated herein as if set out herein in full. The Daily Reflector refused to print the letter of rebuttal. The selective refusal to publish the Plaintiff-Appellant's letter of rebuttal keeps the Plaintiff in a false light in the public eye.

8. On February 9, 1988, the Plaintiff wrote a letter to Defendant Alvin Taylor seeking to have the letter of rebuttal referred to in paragraph 7 hereinabove

published free or on a paid basis. A copy of this letter, Exhibit C, is attached and incorporated herein as if set out herein in full. The Plaintiff received no reply from Defendant Taylor. The Defendant Newspaper did not publish the letter of rebuttal. The second failure to publish the Plaintiff's letter of rebuttal keeps the Plaintiff in a false light in the public eye.

9. The Daily Reflector, Inc. is responsible for any wrongful acts and/or omissions of its employees as Respondeat Superior.

10. Defendant Taylor was acting as an employee of the Defendant Newspaper at the time the wrongful acts and/or omissions alleged herein occurred.

11. At the time of all of the wrongful acts and/or omissions referred to herein occurred, contracts were in effect between the plaintiff and his patients with new contracts being entered between the

plaintiff and new patients occasionally.

12. At least five days before instituting this action, the Plaintiff served notice (s) in writing on the defendants, specifying statements in the January 21, 1988 news report which are false and/or misleading and which falsely defame him.

13. The Daily Reflector and its employees have an obligation to the public which requires that, if they elect to report on an event or occurrence, they make a reasonable effort to report such event or occurrence with reasonable accuracy and fairness to all persons and other entities involved.

FIRST CLAIM FOR RELIEF
(False Defamation)

14. This First Claim For Relief is against both defendants.

15. Plaintiff realleges and incorporates herein by reference paragraphs 1-13 hereinabove, EXHIBIT A, EXHIBIT B, and EXHIBIT C.

16. The publication of false and/or misleading statements and/or the selective

failure to publish material favorable to the Plaintiff, referred to in paragraphs 6, 7, and 8 hereinabove and/or referred to in EXHIBIT B and/or EXHIBIT C, demean the professional reputation of the Plaintiff and libel him.

17. The publications and selective failure to publish, which libel the Plaintiff as referred to in paragraph 16 hereinabove, were carried out with reckless negligence regarding the truth and/or with knowledge of falsity of the statements and with knowledge or reckless negligence as to the fact that selective failure to publish statements favorable to the Plaintiff falsely defames him, and thus occurred due to actual malice on the part of the defendants and/or some of the Defendant Newspaper's employees other than Defendant Taylor. The acts and/or omissions which libel the Plaintiff were carried out with wanton and willful disregard of the Plaintiff's rights by the Defendant News-

paper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper.

18. As a result of the publication of libelous statements by the Defendant Newspaper and/or as a result of the selective failure to publish material favorable to the Plaintiff, referred to in paragraph 16 hereinabove, the Plaintiff has suffered special damages in the form of the cost of secretarial help, office supplies, legal consultation, transportation costs and lost professional fees. The plaintiff has also suffered general damages including damage to his professional reputation, loss of future professional fees, increased migraine headaches, increased esophageal reflux, increased gout and severe emotional distress. The Plaintiff is entitled to punitive damages for the injuries he has suffered in connection with this claim.

SECOND CLAIM FOR RELIEF

(Interference With Right To Privacy)

19. This Second Claim For Relief is against both defendants.

20. Plaintiff realleges and incorporates herein by reference paragraphs 1-18 hereinabove, EXHIBIT A, EXHIBIT B and EXHIBIT C.

21. The publication of false and/or misleading statements and the selective failure to publish material favorable to the Plaintiff, referred to in paragraphs 6, 7 and 8 hereinabove and/or referred to in EXHIBIT B and/or EXHIBIT C, demean the professional reputation of the Plaintiff and interfere with his right to privacy.

22. The publications and selective failure to publish, which interfere with the Plaintiff's right to privacy, as referred to in paragraph 21 hereinabove were carried out with reckless negligence regarding the truth and/or the knowledge of falsity of the statements and with knowledge or reckless negligence as to the fact that selective failure to publish statements favorable to

the Plaintiff keep him in a false light in the public eye, and thus occurred due to actual malice on the part of the defendants and/or some of the Defendant Newspaper's employees other than Defendant Taylor. The acts and/or omissions which interfere with the Plaintiff's right to privacy were carried out with wanton and willful disregard of the Plaintiff's rights by the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper.

23. As a result of the publication of false statements relating to plaintiff and/or the selective failure to publish information favorable to the Plaintiff and thereby interfering with his right to privacy, referred to in paragraph 21 hereinabove, the Plaintiff has suffered special damages in the form of the cost of secretarial help, office supplies, legal consultation, transportation costs, and lost professional fees. The Plaintiff has also suffered general damages including damage to his professional

reputation, loss of future professional fees increased migraine headaches, increased esophageal reflux, increased gout and severe emotional distress. The Plaintiff is entitled to punitive damages in connection with this claim.

THIRD CLAIM FOR RELIEF
(Interference With Contracts)

24. This Third Claim For Relief is against both defendants.

25. The Plaintiff realleges and incorporates herein by reference paragraphs 1-23 hereinabove, EXHIBIT A, EXHIBIT B AND EXHIBIT C.

26. The publication of false and/or misleading statements and/or the selective failure to publish material favorable to the Plaintiff, referred to in paragraphs 6, 7, and 8 hereinabove and/or referred to in EXHIBIT B and EXHIBIT C interferes with contracts in place between the plaintiff and his patients and interferes with the

negotiation of new contracts between the plaintiff and prospective new patients.

27. The publications and the selective failure to publish which interfere with contracts between the Plaintiff and his patients and which interfere with the negotiation of new contracts between the plaintiff and prospective patients, referred to in paragraph 26 hereinabove, were carried out out with reckless negligence as to interfering with contracts and/or with knowledge that the acts and/or omissions would interfere with contracts and thus occurred due to actual malice on the part of the defendants or some of the Defendant Newspaper's employees other than Defendant Taylor. The acts and/or omissions which interfere with the plaintiff's contracts and his negotiations of new contracts were carried out with wanton and willful disregard of the Plaintiff's rights by the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper.

28. As a result of the acts and/or omissions which interfere with the Plaintiff's contracts and negotiation of contracts, referred to in paragraph 26 hereinabove, the Plaintiff has suffered special damages in the form of the cost of secretarial help, office supplies, legal consultation, transportation costs and lost professional fees. The Plaintiff has also suffered general damages including damages to his professional reputation, loss of future professional fees, increased migraine headaches, increased esophageal reflux, increased gout and severe emotional distress. The Plaintiff is entitled to punitive damages in connection with this claim.

WHEREFORE the plaintiff respectfully
PRAYS THE COURT:

a. That the Plaintiff have and recover from the defendants, both jointly and severally, judgement in a sum greater than ten thousand dollars (\$10,000), with interest

thereon; as relief for special damages, general damages and punitive damages incurred or to be incurred in excess of ten thousand dollars (\$10,000).

b. That the costs of this action be taxed against the defendants.

c. For a jury trial as to all issues properly triable thereby.

d. For all other and further relief as to the Court may seem just and proper.

This the 30th day of January, 1989.

S/ JOSEPH M. WARD

Joseph M. Ward
121 West Powere Street
Ayden, NC 28513
Telephone: 919 746 3191
Plaintiff

NORTH CAROLINA

PITT COUNTY

JOSEPH M. WARD, first being duly sworn,
deposes and says:

That he is the plaintiff in the fore-
going action; that he has read the foregoing
COMPLAINT AND DEMAND FOR JURY TRIAL and that
the contents of said COMPLAINT AND DEMAND
FOR JURY TRIAL are true to his own knowledge
except as to those matters stated on infor-
mation and belief and as to those matters he
believes them to be true.

S/ JOSEPH M. WARD

JOSEPH M. WARD

Sworn to and subscribed before me this the
30th day of January, 1989.

S/Eliza J. Richardson

NOTARY PUBLIC

My Commission Expires: Dec. 17, 1992

Exhibits to complaint are being omitted from
appendix.

NORTH CAROLINA

PITT COUNTY

JOSEPH M. WARD

Plaintiff

vs.

THE DAILY
REFLECTOR, INC.,
and ALVIN TAYLOR
Defendants

IN THE GENERAL
COURT OF JUSTICE
SUPERIOR COURT
DIVISION
FILE NO. 89 CVS 249

AMENDED
COMPLAINT AND DEMAND
FOR JURY TRIAL

The Plaintiff, complaining of the Defendants, alleges and states as follows:

THE PARTIES

1. The Plaintiff is a physician duly licensed to practice medicine in North Carolina. The Plaintiff is a resident of Pitt County, North Carolina. The Plaintiff practices family medicine in Pitt County. The Plaintiff served as Medical Director of University Nursing Center in Greenville, N.C. from about July 1, 1981 until May 16, 1987. The Plaintiff has been (and still is) an attending physician at University Nursing Center since about July 1, 1981.

2. Defendant The Daily Reflector,

Inc., hereinafter referred to as the Defendant Newspaper at times, is a North Carolina Corporation with its principle offices located in Greenville, N.C. and which publishes a newspaper named The Daily Reflector, hereinafter referred to as the Newspaper at times.

3. Defendant Alvin Taylor, hereinafter referred to as Defendant Taylor at times, is the Managing Editor of The Daily Reflector. On information and belief, Defendant Taylor is responsible for day to day decisions regarding news coverage, editorial coverage and Letters to the Editor.

THE FACTS

4. On September 24, 1985, the Defendant Newspaper published an article reporting a meeting of the Pitt County Nursing Home Community Advisory Committee (hereinafter referred to as the Committee at times) at which complaints of some relatives of some University Nursing Center residents were heard. This article is biased and

unfair to University Nursing Center and to physicians attending residents there, including the Plaintiff. The article creates a false light in the public eye concerning University Nursing Center and its attending physicians, including the Plaintiff.

5. On October 31, 1985, the Pitt County Nursing home Community Advisory Committee resigned because its members became concerned about their legal status following the Plaintiff's complaints to the Mideast Commission concerning unlawful actions of the Committee.

6. At the time of their resignation, both the Pitt County Nursing Home Community Advisory Committee and the Pitt Board of County Commissioners were aware, or should have been aware, that the Committee had been violating North Carolina statutory law in connection with handling complaints from some family members concerning the care of some of their relatives who were residents at University Nursing Center. Further, at the

time of its resignation, the Committee and the Pitt County Board of County Commissioners knew, or should have known, that the person who had complained to the Mideast Commission concerning the violations of statutory law was the Plaintiff.

7. Following the Committee's resignation, described under paragraph 5 hereina-
bove, the Daily Reflector published articles on November 3, 1985 and November 5, 1985 and an editorial on November 11, 1985 supporting the Committee, all of which are biased and unfair to University Nursing Center and/or the Plaintiff and all of which create and/or help maintain and/or increase a false light (s) in which University Nursing Center and attending physicians at that facility, including the Plaintiff, have been placed by The Daily Reflector. The editorial published on November 11, 1985 contains false statements. On information and belief, at the time the first of these articles was published and thereafter, the Newspaper

made no effort, or insufficient effort, to ascertain enough of the facts surrounding the resignation of the Committee so that a fair and unbiased account of the resignation could be published.

8. On or about November 3, 1985, the Plaintiff telephoned Stuart Savage, a reporter with the Newspaper, and told him numerous facts and details related to the controversy surrounding University Nursing Center and the Pitt County Nursing Home Community Advisory Committee. The Plaintiff explained that the Committee had been exceeding their statutory authority in connection with their actions related to University Nursing Center. In particular, the Plaintiff explained that the Committee had no legal authority to hold public hearings concerning the care of residents at a nursing home. During the conversation, the Plaintiff furnished the reporter with many details concerning a malpractice action brought against University Nursing Center

and the Plaintiff in this action by Josephine House, a former resident at University Nursing Center. At that time, the Complaint in that action had not been filed. The Plaintiff explained to the reporter that Josephine House had received an apparent minor injury as a result of an incident at the nursing home on February 26, 1985, that the Plaintiff examined Josephine House on the morning of February 27, 1985 and found no evidence of serious injury, that Josephine House dismissed the Plaintiff as her attending physician on February 27, 1985 and that her new attending physician examined her on the evening of February 27, 1985 and found no evidence of serious injury. Further, the Plaintiff explained that Josephine House's new attending physician had next visited her 17 days later and found an area of bluish discoloration above her right knee, that the physician decided to seek an orthopedic consult, that the consultation did not occur until four days later; this being 21

days after Josephine House had changed physicians. The Plaintiff further explained that the consultant ordered an x-ray and found Josephine House's right femur to be fractured a short distance above the knee, and that it was impossible to determine for certain when the fracture occurred. Further, the Plaintiff explained to the reporter that the physician who had Josephine House under her care for 21 days before the fracture was discovered was not a defendant in the malpractice action brought by Josephine House while the Plaintiff in this action, who had cared for Josephine House for approximately 28 hours after the hereinabove described injury occurred, was defendant in that action. Further, the Plaintiff informed the reporter concerning facts which support a contention that Josephine House's brother-in-law, Frank House, had developed personal animosity toward the Plaintiff before the fracture of Josephine House's femur occurred and facts which support a contention that Frank House

had developed animosity toward University Nursing Center and its administrator, Kyle Dilday, before Josephine House's malpractice action was filed. Further, the Plaintiff told the reporter that there was considerable evidence that Frank House had solicited family members of University Nursing Center residents to register complaints with the Pitt County Nursing Home Community Advisory Committee.

9. During a visit to the Daily Reflector, in December, 1985, the Plaintiff discussed a proposed Letter to the Editor, submitted to the Daily Reflector by him on or about November 16, 1985, with reporter Carol Tyer and Defendant Taylor. The Plaintiff informed both Carol Tyer and Defendant Taylor concerning details related to his contention that the Pitt County Nursing Home Community Advisory Committee had been exceeding its statutory authority. The Plaintiff informed both Tyer and Defendant Taylor concerning the oddity of the

Plaintiff being sued regarding his care for about 28 hours after an incident which may have caused a fracture of Josephine House's right femur, while the physician who cared for her for 21 days before a fracture was found was not a defendant in that action. The Plaintiff explained to both of them that these circumstances were probably due to the fact that Frank House was upset with University Nursing Center, Mr. Kyle Dilday and the Plaintiff. The Plaintiff also offered facts supporting a contention that personal animosity against University Nursing Center, Kyle Dilday and the Plaintiff was a motivating factor in a campaign that Frank House had launched against University Nursing Center and that personal animosity toward the Plaintiff on the part of Frank House might explain the oddity of the Plaintiff being a defendant in Josephine House's malpractice action while the physician who replaced the Plaintiff was not a defendant in that action. The Defendant

Newspaper could have easily confirmed that Frank House did have personal animosity directed against University Nursing Center, Kyle Dilday and the Plaintiff.

10. On December 16, 1985, The Daily Reflector, after considerable editing, printed the Letter to the Editor described under paragraph 9 hereinabove. The Newspaper refused to let the Plaintiff as much as suggest any personal reason (s) why Frank House was being so vigorous in his activities directed against University Nursing Center and thereby created and/or maintained and/or increased a false light (s) in which University Nursing Center and/or the Plaintiff have been placed by the Daily Reflector.

11. On December 20, 1985, shortly after the Complaint was filed in the Josephine House malpractice action that had been entered in late October, 1985, the Defendant newspaper published a news report concerning that action. The news report describes false allegations contained in

the Complaint of that action which falsely defame the Plaintiff and contains misleading statements which falsely defame the Plaintiff. The news report also contains a statement that Josephine House was seeking \$750,000 in actual damages and \$750,000 in punitive damages. The amount of damages Josephine House was seeking do not appear in her complaint. The Defendant Newspaper's reporters Carol Tyer and Stuart Savage plus Defendant Taylor knew, or should have known, at the time the false and/or misleading statements which defame the Plaintiff were published, that they are false and/or misleading. Further, the Defendant Newspaper failed to contact the Plaintiff before publication of the herein referred to false and misleading statements in order to give the Plaintiff an opportunity to rebut the false and/or misleading statements in the same article in which they were published. Further, the false and misleading statements contained in the Complaint in the

Josephine House action which falsely defame the plaintiff were published out of context and with omission of a statement contained in the Complaint which is favorable to the Plaintiff in this action. This set of circumstances creates and/or maintains and/or increases a false light (s) in the public eye in which the Plaintiff has been placed by The Daily Reflector. Further the Defendant Newspaper refused to retract any of the statements which are false and/or misleading and which defame the Plaintiff and/or relate to a false light being placed on the Plaintiff, thereby maintaining the false light it has directed upon the Plaintiff. The statements contained in the December 20, 1985 news report which are false and which falsely defame the Plaintiff and/or which place him in a false light in the public eye and/or maintain the false light and/or increase the false light are specified on pages 8 through 11 of EXHIBIT A which is attached to this complaint and

incorporated herein by reference as if set out herein in full.

12. On information and belief, after the Pitt County Nursing Home Ccmmunity Advisory Committee resigned on October 31, 1985, Frank House shifted his complaints concerning University Nursing Center to the North Carolina Department of Facility Services and to the Pitt County Department of Social Services. On information and belief, he solicited and obtained help from Edward N. Warren, member of the North Carolina House of Representatives. After none of these acts achieved his objectives, Frank House, along with Carolyn James, entered a class action suit against Univeristy Nursing Center, Mr. Kyle Dilday and others, not including the Plaintiff in this action, on April 8, 1986. Before the class action was entered, the Plaintiff had been so well identified by the media as being Medical Director at University Nursing Center that many citizens in eastern North Carolina

reasonably would be expected to construe any criticism of that facility to also be criticism of the Plaintiff.

13. On July 15, 1986, the Defendant Newspaper published a letter to the Editor signed by Frank House which is highly critical of nursing homes in general and also critical of the North Carolina Department of Facility Services. In view of Frank House's past activities, it was immediately clear to the Plaintiff that two of Frank House's main targets in that letter are University Nursing Center and the Plaintiff. Under the circumstances, the Plaintiff again felt compelled to try to inform the public concerning facts which support a contention that Frank House did have personal animosity against University Nursing Center and the Plaintiff. The Plaintiff prepared a letter to the Editor critical of Frank House's actions and submitted it to the Defendant Newspaper. In this letter, the Plaintiff states facts

which support a contention that Frank House had personal animosity against University Nursing Center and the Plaintiff and which support a contention that such personal animosity was a factor in connection with some of Frank House's acts directed against University Nursing Center. The Defendant newspaper refused to publish this letter in its Public Forum or as paid opinion of the Plaintiff. During his oral deposition taken in Pitt County 86-CVS-1309 on November 21, 1986, Frank House gave testimony which supports a contention that he has personal animosity directed against the Plaintiff in this action and further testified that he did not want the Plaintiff to continue as Medical Director at University Nursing Center for personal reasons. The publication of Frank House's Letter to the Editor referred to herein plus the refusal to publish the Plaintiff's letter referred to herein falsely defame University Nursing Center and the Plaintiff and create and/or

maintain and/or increase a false light (s) in which University Nursing Center and the Plaintiff have been placed by The Daily Reflector.

14. On October 12, 1986, and on May 19, 1987, The Daily Reflector published letters to the Editor attributed to C.B. "Kip" West, one of the former members of the Pitt County Nursing Home Community Advisory Committee who resigned, as referred to under paragraph 5 hereinabove. Those letters contain considerable data regarding inspections of University Nursing Center and they are highly critical of University Nursing Center. At the times the letters were published, The Daily Reflector knew, or should have known, or should have suspected, the C.B. "Kip" West and Frank House were in some way allied. The Plaintiff has heard Frank House testify, under oath, that he and "Kip" West are allied in connection with their criticism of University Nursing Center and that Frank House has supplied

C.B. West with data to be used for publication in connection with their criticism of University Nursing Center. Under the circumstances described herein, the publication of C.B. West's Letter to the Editor referred to herein creates and/or maintains and/or increases a false light (s) in which University Nursing Center and the Plaintiff have been placed by The Daily Reflector.

15. On October 26, 1986, The Daily Reflector published an Open Letter attributed to Frank House supporting some local politician. This letter is highly critical of University Nursing Center. Under the circumstances, this letter creates and/or maintains and/or increases a false light (s) directed on University Nursing Center and the Plaintiff by The Daily Reflector.

16. On December 18, 1986, The Daily Reflector published an article reporting on the filing of the filing of the Complaint in Pitt County 86-CVS-2235 (the first action filed against The Daily Reflector and Alvin

Taylor by the Plaintiff in this action) and the filing of the complaint in Pitt County 86-CVS-2243 (an action brought by the Plaintiff in this action against Roy H. Park Broadcasting Co., Inc. and others). In that article, the Newspaper, for the first time, referred to the Plaintiff's long standing contention that personal animosity on the part of one individual was probably a factor in connection with problems being experienced by University Nursing Center and the Plaintiff. The Newspaper article failed to identify that individual as being Frank House. The failure to identify him as Frank house distorts the contents of the Complaint and thereby defames University Nursing Center and the Plaintiff and creates and/or maintains and/or increases a false light (s) in which University Nursing Center and the plaintiff have been placed by The Daily Reflector.

17. On February 16, 1987, The Daily Reflector published an article which

relates to the filing of answers and counterclaims by the defendants in the first action brought against The Daily Reflector and Alvin Taylor by the Plaintiff (86CVS2235) and by part of the defendants in the action which was brought by the Plaintiff against Roy H. Park Broadcasting Co., Inc. and others (86-CVS-2243). At the time the article was published, The Daily Reflector knew, or should have known, that the counterclaims were groundless and contrary to statutory law. The published material relating to the counterclaims falsely defames the Plaintiff and creates and/or maintains and/or increases a false light in which he has been placed by The Daily Reflector. In the article, some of the defendants who had not answered at that point in time were given an opportunity to indicate how they would answer the Plaintiff's claims.

18. On February 17, 1987, The Daily Reflector published an article reporting on on a medical malpractice action filed by

Clarence Ormond against University Nursing Center, the Plaintiff in this action, and others. The news report distorts the truth concerning University Nursing Center and the Plaintiff, falsely defames University Nursing Center and the Plaintiff and creates and/or maintains and/or increases a false light (s) in which University Nursing Center and the Plaintiff have been placed by The Daily Reflector. The Newspaper gave the Plaintiff in this action no opportunity to rebut Clarence Ormond's allegations in the same article.

19. In about July, 1987, the Plaintiff informed The Daily Reflector reporter Stuart Savage that the Plaintiff had reviewed the reports of medicare-Medicaid certification inspections of Greenville Villa by the North Carolina Department of Facility Services for the period beginning January 1, 1985 and ending about June 30, 1987 and that these reports indicated that the alleged deficiencies cited at Greenville Villa

during this period were greater than the alleged deficiencies cited at University Nursing Center by the Department of Facility Services during the same period. The Plaintiff indicated to Reporter Savage how the inspection reports could be easily obtained. Based on information and belief, The Daily Reflector has failed to publish any information regarding deficiencies alleged to have been found at Greenville Villa by any inspection team (s) at any time. This set of circumstances falsely defames University Nursing Center and the Plaintiff and creates and/or maintains a false light (s) in which University Nursing Center and the Plaintiff have been placed by The Daily Reflector.

20. On January 21, 1988, the Plaintiff served a notice of voluntary dismissal, without prejudice, of his claims against Defendants Roy H. Park Broadcasting Co., Inc. and Roy Hardee in Pitt County 88 CVS 2243 during a hearing on those defendants'

Motion For Summary judgement. The Court declared the notice invalid on the same date.

21. On January 22, 1988, the Court entered an interlocutory summary judgement in favor of Defendants Roy H. Park Broadcasting Co., Inc. and Roy Hardee in Pitt County 86CVS2243.

22. On January 25, 1988, the Defendant Newspaper published a news report which falsely states that a civil suit brought against Roy H. Park Broadcasting Co., Inc., and Roy Hardee was dismissed by Judge James D. Llewellyn. The article contains no reference to the Plaintiff-Appellant's Notice Of Dismissal referred to under paragraph 20 hereinabove. The headline and the statement that the suit was dismissed falsely defame the Plaintiff and place him in a false light in the public eye and keeps him there. The omission of information relating to the denial of the Plaintiff's Notice of Dismissal and the failure to report that a

summary judgement had been entered and the oddity of the judgement entered being based in part on absolute privilege as to news reports falsely defames the Plaintiff and placed him in a false light in the public eye and keeps him there.

23. On January 28, 1988, the Plaintiff hand delivered to Defendant Alvin Taylor a letter of rebuttal addressed to the Editor of The Daily Reflector, Inc., seeking publication of the letter. The Daily Reflector refused to print the letter of rebuttal. The selective refusal to publish the Plaintiff-Appellants's letter of rebuttal keeps the Plaintiff in a false light in the public eye.

24. On February 9, 1988, the Plaintiff wrote a letter to Defendant Alvin Taylor seeking to have the letter of rebuttal referred to in paragraph 7 hereinabove published free or on a paid basis. The Plaintiff received no reply from Defendant Taylor. The Defendant Newspaper did not publish the

letter of rebuttal. The second failure to publish the Plaintiff's letter of rebuttal keeps the Plaintiff in a false light in the public eye.

25. The Josephine House malpractice action (s), referred to in paragraphs 8, 9, and 11 hereinabove, was terminated as to the Plaintiff (in this action) by Josephine House's attorney filing a second notice of voluntary dismissal on March 28, 1988, the same date that the Motion For Summary Judgment filed in that action by the Plaintiff was scheduled to be heard.

26. On information and belief, The Daily Reflector failed to report that Josephine House gave up her claims against the Plaintiff (in this action) and that she gave up before her action advanced as far as the hearing of the Motion For Summary Judgement filed by the Plaintiff in this action. The failure to report the termination of the Josephine House malpractice action as to the Plaintiff in this action

falsely defames the Plaintiff and maintains and/or increases the false light in the public eye in which the Plaintiff has been placed by The Daily Reflector.

27. On June 10, 1988, in Pitt County 86-CVS-2243, the Court entered sanctions in favor of Defendants Roy H. Park Broadcasting Co., Inc. and Roy Hardee (and against the Plaintiff in this action), including \$13,450.00 in attorney's fees, based in part on the entry of summary judgement in favor of those defendants.

28. On June 20, 1988, The Daily Reflector published a news report relating to the entry of sanctions referred to in paragraph 27 hereinabove. Shortly before the news report was published, the Plaintiff discussed the entry of sanctions with Daily Reflector reporter Stuart Savage by telephone. During the conversation, the Plaintiff pointed out the fact that the summary judgement entered in favor of Roy H. Park Broadcasting, Co., Inc. and Roy Hardee was

based in part on absolute privilege as to news reports of judicial proceedings and that no such absolute privilege exists in this country. The news report of June 20, 1988 falsely states that Judge Llewellyn dismissed the Plaintiff's complaint in 86-CVS-2243. The news report refers to the court having found some broadcasts to be absolutely privileged, but it fails to point out the oddity of that ruling or the Plaintiff's contention that absolute privilege as to news reports does not exist in this country. At the time the June 20, 1988 news report was published, Reporter Stuart Savage and/or some other Daily Reflector employees knew, or should have known, that absolute privilege as to news reports does not exist in this county. Further, the Plaintiff had pointed out to Reporter Savage the oddity of Judge Llewellyn's having declared invalid the Plaintiff's Notice Of Dismissal which was served at the Summary Judgement hearing on January 21, 1989.

The news report contains no direct reference to the Notice Of Dismissal having been declared invalid. The news report falsely defames the Plaintiff and it creates and/or maintains and/or increases a false light in the public eye in which the Plaintiff has been placed by the Defendant Newspaper.

29. The Daily Reflector knows, or should know, that Bernice Moore has played an important role in connection with problems that University Nursing Center and the Plaintiff have experienced since 1984. Further, The Daily Reflector knows, or should know, that Bernice Moore has personal animosity directed against University Nursing Center and that she is allied with Lonnie Butler and with Frank House. Based on information and belief, The Daily Reflector has not reported on any of these facts. The failure of The Daily Reflector to report on these important facts, coupled with the newspaper's reporting on matters

unfavorable to University Nursing Center and/or the Plaintiff, falsely defames University Nursing Center and the Plaintiff, and creates and/or maintains and/or increases a false light (s) in which University Nursing Center and/or the Plaintiff have been placed by The Daily Reflector.

30. The Daily Reflector knows, or should know, that Lonnie Butler has played an important role in connection with problems that University Nursing Center and the Plaintiff have experienced since 1984. Further, The Daily Reflector knows, or should know, that Lonnie Butler has a long history of active intervention in the affairs of long term health care facilities, including facilities in which none of his relatives reside. Further, The Daily Reflector knows, or should know, that Lonnie Butler's weak educational background, his general background and his attitudes and opinions relating to long term health care indicates that Lonnie Butler is not a suitable

person to be evaluating and/or intervening in connection with the health care provided by any type of health care facility. The failure of The Daily Reflector to report on these important facts coupled with the newspaper's reporting on matters unfavorable to University Nursing Center and/or the Plaintiff falsely defames University Nursing Center and the Plaintiff and creates and/or maintains and/or increases a false light (s) in which University Nursing Center and/or the Plaintiff have been placed by The Daily Reflector.

31. Since 1961, The Daily Reflector has seldom reported on civil actions filed in Pitt County and, except for two actions in which the Plaintiff in this action is a defendant (s), as referred to in paragraph 11 and paragraph 19 hereinabove, has rarely, if ever, reported on a health care malpractice action filed in Pitt County before the Complaint was answered. During the period beginning on January 1, 1983 and ending on

December 31, 1987, approximately 32 health care malpractice actions were filed in Pitt County. Few, if any, of these other than two in which the Plaintiff in this action is a defendant (s) (as referred to hereinabove) have been reported upon the The Daily Reflector at any stage of their litigation. This set of circumstances falsely defames the Plaintiff and creates and/or maintains and/or increases a false light (s) in which the Plaintiff has been placed by The Daily Reflector.

32. Most of the false and/or misleading statements and/or misleading omissions related to news reports published by The Daily Reflector which falsely defame the Plaintiff and/or University Nursing Center and/or create and/or maintain and/or increase a false light (s) in which the Plaintiff and/or University Nursing Center have been placed by The Daily Reflector are referred to in EXHIBIT A which is attached to this complaint and incorporated herein

by reference as if set out herein in full.

33. Defendant Taylor, reporters Carol Tyer and Stuart Savage were acting as employees and/or servants and/or agents of The Daily Reflector, Inc. at the times all of the wrongful acts and/or omissions alleged herein occurred. Based on information and belief Defendant Taylor, at the time of all wrongful acts and/or omissions alleged herein, was responsible for day to day decisions of The Daily Reflector regarding news coverage, editorials and letters to the Editor.

34. The Daily Reflector, Inc. is responsible for any wrongful acts and/or omissions of its employees as ~~Respondeat~~ Superior.

35. The Daily Reflector and its employees have an obligation to the public which requires that, if they elect to report an event or an occurrence, they make a reasonable effort to report such event or occurrence with reasonable accuracy and

reasonable fairness to all persons and other entities involved. On information and belief, due at least partly to efforts to maintain or increase advertising revenues, the Defendant Newspaper and Defendant Taylor and some of its employees failed to fulfill this obligation.

36. As Medical Director of University Nursing Center from 1981 until May 16, 1987, and as the attending physician of up to 60 residents of that facility, the Plaintiff, has been and is so closely identified with University Nursing Center that any act and/or omission which is falsely defamatory to University Nursing Center and/or which creates and/or maintains and/or increases a false light concerning care provided to residents by that facility can be fairly construed to be falsely defamatory to the Plaintiff and/or fairly construed to create and/or maintain and/or increase a false light (s) directed on the Plaintiff. This set of circumstances has

existed at least since January 1, 1985.

37. Pursuant to N.C. General Statute 99-1 (a), at least five days before instituting this action the Plaintiff served five days notice upon the defendants specifying articles and statements therein which are false and falsely defame the Plaintiff and specifying omissions which falsely defame the Plaintiff. The notice also specifies statements and/or omissions which direct and/or maintain and/or increase the false light (s) in the public eye in which the Plaintiff has been placed by The Daily Reflector.

38. When the December 20, 1986 news report relating to the filing of the Complaint in the Josephine House malpractice action (referred to in paragraph 11 hereinabove) was published by The Daily Reflector, the complaint in that actions had not then been answered or otherwise acted upon. When the February 17, 1987 news report relating to the filing of the Complaint

in the Clarence Ormond malpractice action (referred to in paragraph 18 hereinabove) was published by The Daily Reflector, the complaint in that action had not then been answered or otherwise acted upon. Based on information and belief, no privilege _ exists in North Carolina as to the publication of news reports relating to a pleading filed in a case when the pleading has not been acted upon.

39. - At the time all of the wrongful acts and/or omissions of the Defendant Newspaper and/or Defendant Taylor and/or other employees of the Defendant Newspaper occurred, contracts were in effect between the Plaintiff and University Nursing Center, Inc. and between the Plaintiff and his patients (some of whom were residents at University Nursing Center) and new contracts were being entered into with new patients occasionally. After The Daily Reflector began to publish false and/or misleading statements and/or to selectively fail to

publish facts favorable to University Nursing Center and/or the Plaintiff, some of those contracts in effect were terminated and the Plaintiff's ability to enter new contracts was impaired.

40. Since about September, 1985, the Plaintiff has suffered from intermittent bouts of severe emotional distress with the loss of hundreds of hours of sleep, some depression, severe nervous tension at times, increased migraine headaches, increased esophageal reflux and increased gout.

41. Since September, 1985, the Plaintiff has expended approximately \$20,000 in the form of cost of secretarial help, office supplies, legal consultation, litigation expenses and transportation costs in an effort to minimize the damage to him and his medical practice that began to occur when the storm surrounding University Nursing Center and the Plaintiff arose. The Plaintiff has failed to receive a substantial

amount of money that he would have received as professional fees if the storm had not erupted. At this point in time, the Plaintiff has sustained an easily measurable ongoing loss of about thirty thousand dollars (\$30,000) a year in professional fees plus the loss of additional professional fees that are not easily measurable. Part of the Plaintiff's damage control expenses and part of his loss of professional fees occurred before he become a Plaintiff in any action related to the storm surrounding University Nursing Center and the Plaintiff.

FIRST CLAIM FOR RELIEF
(Libel and/or Slander)

42. This First Claim For Relief is against both defendants.

43. Plaintiff realleges and incorporates herein by reference paragraphs 1-41 hereinabove and EXHIBIT A.

44. The publication of false and/or misleading statements and/or the selective failures to publish statements favorable

to University Nursing Center and/or the Plaintiff, thereby falsely defaming the Plaintiff, referred to under paragraphs 10, 11, 13, 16, 17, 18, 19, 22, 23, 24, 26, 28, 29, 30, and 31 hereinabove and/or as referred to in EXHIBIT A, demean the professional reputation of the Plaintiff and libel and/or slander him.

45. The publications and selective failures to publish (referred to under paragraph 44 hereinabove) which libel and/or slander the Plaintiff were carried out with a high degree of awareness of probable falsity of the statements or with knowledge of the falsity of the statements published and with knowledge that the (false) statements published and/or selective failures to publish statements favorable to University Nursing Center and the Plaintiff falsely defame the Plaintiff. Thus, the publications and selective failure to publish were carried out with both U.S. Constitutional and North Carolina actual

malice on the part of the Defendant Newspaper and/or Defendant Taylor and/or some of the Defendant Newspaper's employees other than Defendant Taylor, The publications and selective failures to publish which libel and/or slander the Plaintiff were carried out in bad faith and/or without probable cause and/or without checking for the truth by the means at hand and thus were carried out with a reckless disregard for the truth and with North Carolina actual malice on the part of the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper. The publications and selective failures to publish which libel and/or slander the Plaintiff were carried out with wanton and willful disregard of the Plaintiff's rights by the Defendant Newspaper, and/or Defendant Taylor and/or some other employees of the Defendant Newspaper.

46. The failure of the Defendant Newspaper and Defendant Taylor to

fairly report the controversy involving the Pitt County Nursing Home Community Advisory Committee and University Nursing Center constitutes an aggravating circumstance in this First Claim For Relief.

47. As a result of the libelous statements published by the Defendant Newspaper and/or as a result of the selective failure to publish some statements, referred to under paragraph 44 hereinabove, the Plaintiff has suffered damages from severe emotional distress causing the loss of hundreds of hours of sleep, some mental depression, severe tension at times, increased migraine headaches, increased esophageal reflux and increased gout. Additionally, the Plaintiff has suffered special damages in the form of the cost of secretarial help, office supplies, legal consultation, litigation expenses, transportation costs, lost professional fees and impairment of personal relationships with family and friends plus general damages including damages to his

professional reputation and loss of future professional fees. The Plaintiff is entitled to punitive damages for the injuries he has suffered in connection with this claim.

SECOND CLAIM FOR RELIEF

(Interference With Right To Privacy)

48. This Second Claim For Relief is against both defendants.

49. Plaintiff realleges and incorporates herein by reference paragraphs 1-47 hereinabove, paragraphs 53-67 hereinbelow and EXHIBIT A.

50. The publication of false and/or misleading statements and/or the selective failure to publish statements favorable to University Nursing Cener and/or the Plaintiff and thereby creating and/or maintaining and/or increasing a false light (s) in which University Nursing Center and the Plaintiff have been placed by The Daily Reflector, referred to in paragraphs 4, 7, 10, 11, 13, 14, 15, 16, 17, 18, 19, 22, 23,

24, 26, 28, 29, 30 and 31 hereinabove and/or as referred to in EXHIBIT A, interferes with the Plaintiff's right to privacy.

51. The acts and/or omissions of the Defendants which interfere with the Plaintiff's right to privacy, referred to in paragraph 50 hereinabove, were carried out with a high degree of awareness of probable falsity of the statements published or with knowledge that the statements published are false and/or distorted and with knowledge that the acts and/or omissions were creating and/or maintaining and/or increasing a false light (s) in which University Nursing Center and/or the Plaintiff have been placed by The Daily Reflector. Thus, the acts and/or omissions which interfere with the Plaintiff's right to privacy were carried out with both U.S. Constitutional and North Carolina actual malice on the part of the Defendant Newspaper and/or Defendant Taylor and/or some other employees of The Daily Reflector. The publications and selective failure to

publish which interfere with the Plaintiff's right to privacy were carried out in bad faith and/or without probable cause and/or without checking for the truth with the means at hand and thus were carried out with a reckless disregard for the truth and thus with North Carolina actual malice on the part of the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper. The acts and/or omissions which interfere with the Plaintiff's right to privacy were carried out with wanton and willful disregard for the Plaintiff's right by the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper.

52. As a result of the statements published by the Defendant Newspaper and/or as a result of the selective failure to publish statements, referred to in paragraph 50 hereinabove, which have interfered with his right to privacy, the Plaintiff has suffered damages from severe emotional

distress causing the loss of hundreds of hours of sleep, some mental depression, severe tension at times, increased migraine headaches, increased esophageal reflux and increased gout. Additionally, the Plaintiff has suffered special damages in the form of the cost of secretarial help, office supplies, legal consultation, litigation expenses, transportation costs, lost professional fees and impairment of personal relationships with family and friends plus general damages including damages to his professional reputation and loss of future professional fees. The Plaintiff is entitled to punitive damages for the injuries he has suffered in connection with this claim.

THIRD CLAIM FOR RELIEF

(Intentional Infliction Of Emotional Distress)

53. This Third Claim For Relief is against both defendants.

54. The Plaintiff realleges and incorporates herein by reference paragraphs 1-52

hereinabove, paragraphs 58-67 hereinbelow and EXHIBIT A.

55. The publication of false and/or misleading statements and/or the selective failure to publish statements favorable to University Nursing Center and/or the Plaintiff and thereby creating and/or maintaining and/or increasing a false light (s) in which University Nursing Center and the Plaintiff have been placed by the Defendant Newspaper and/or Defendant Taylor and/or some other employees of The Daily Reflector, referred to in paragraphs 4, 7, 10, 11, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 26, 28, 29, 30, and 31 hereinabove and/or referred to in EXHIBIT A, constitutes extreme and outrageous conduct on the part of the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper. The extreme and outrageous conduct was intended to cause the Plaintiff to suffer severe emotional distress and/or was carried out with a reckless

indifference to likelihood that it would cause the Plaintiff to suffer severe emotional distress.

56. The acts and/or omissions constituting extreme and outrageous conduct of the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper, referred to in paragraph 55 hereinabove, was carried out with knowledge that a false light directed upon University Nursing Center was being created and/or maintained and/or increased by The Daily Reflector and/or with a high degree of awareness of probability of such false light being created and/or maintained and/or increased. Thus, the extreme and outrageous conduct was carried out with both U.S. Constitutional and North Carolina malice on the part of the Defendant Newspaper, Defendant Taylor and/or some other employees of the Defendant Newspaper. The acts and/or omissions constituting extreme and outrageous conduct were carried out in bad faith and/or without

probable cause and/or without checking for the truth by the means at hand and were thus carried out with a reckless disregard for the truth and with North Carolina actual malice on the part of the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper.

57. As a result of the extreme and outrageous conduct of the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper, referred to in paragraph 55 hereinabove, the Plaintiff has suffered damages from severe emotional distress causing the loss of hundreds of hours of sleep, some mental depression, severe tension at times, increased migraine headaches, increased esophageal reflux and increased gout. Additionally, the extreme and outrageous conduct which inflicted severe emotional distress on the Plaintiff has caused him to suffer special damages in the form of the cost of secretarial help, office

supplies, legal consultation, litigation expenses, transportation costs, lost professional fees and impairment of personal relationships with family and friends plus general damages including damages to his professional reputation and loss of future professional fees. The Plaintiff is entitled to punitive damages for the injuries he has suffered in connection with this claim.

FOURTH CLAIM FOR RELIEF
(Interference With Contracts)

58. This Fourth Claim For Relief is against both defendants.

59. The Plaintiff realleges and incorporates herein by reference paragraphs 1-57 hereinabove, paragraphs 63-67 hereinbelow and EXHIBIT A.

60. The publication of false and/or misleading statements and/or the selective failure to publish material favorable to University Nursing Center and/or the Plaintiff, referred to in paragraphs 4, 7, 10,

11, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 26, 28, 29, 30 and 31 hereinabove and/or referred to in EXHIBIT A, interfered with the contract that was in place between the Plaintiff and University Nursing Center, and/or interfered with contracts that were in effect between the Plaintiff and some of his patients and/or interferes with the entry of new contracts between the Plaintiff and prospective new patients.

61. The publications and selective failure to publish which interfered with contracts in place and/or which interfere with the development of new contracts, referred to in paragraph 60 hereinabove, were carried out with knowledge that contracts in effect and/or prospective contracts were being interfered with and/or with a high degree of awareness of the probability that such interference with contracts would occur. Thus, the interference with contracts was carried out with both U.S. Constitutional and North Carolina

actual malice on the part of the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper. The publications and selective failures to publish which interfered with contracts in effect and with prospective contracts were carried out in bad faith and/or without probable cause and/or without checking for the truth with the means at hand and were thus were carried out with reckless disregard for the truth and with North Carolina actual malice on the part of the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper. The publications and selective failures to publish which libel and/or slander the Plaintiff were carried out with wanton and willful disregard of the Plaintiff's rights by the Defendant Newspaper, and/or Defendant Taylor and/or some other employees of the Defendant Newspaper.

62. As a result of the interference with contracts and interference with prospective contracts, referred to in paragraph 60 hereinabove, the Plaintiff has suffered damages from severe emotional distress causing the loss of hundreds of hours of sleep, some mental depression, severe tension at times, increased migraine headaches, increased esophageal reflux and increased gout. Additionally, the Plaintiff has suffered special damages in the form of the cost of secretarial help, office supplies, legal consultation, transportation costs, lost professional fees and impairment of personal relationships with family and friends plus general damages including damages to his professional reputation and loss of future professional fees. The Plaintiff is entitled to punitive damages for the injuries he has suffered in connection with this claim.

FIFTH CLAIM FOR RELIEF

(Interference With Personal Property Right)

63. This Fifth Claim For Relief is against both defendants.

64. The Plaintiff realleges and incorporates herein by reference paragraphs 1-62 hereinabove and EXHIBIT A.

65. The Publication of false and/or misleading statements and/or the selective failure to publish material favorable to University Nursing Center and/or the Plaintiff, referred to in paragraphs 4, 7, 10, 11, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 26, 28, 29, 30 and 31 hereinabove and/or referred to in EXHIBIT A, interferes with the Plaintiff's private property right to practice medicine.

66. The publications and/or selective failure to publish which interferes with the Plaintiff's right to practice medicine, referred to in paragraph 65 hereinabove, were carried out with knowledge that the Plaintiff's right to practice medicine was (and is) being interfered with and/or with a high degree of awareness of the probability

that such interference with the Plaintiff's right to practice medicine would occur. Thus the interference with contracts was carried out with both U.S. Constitutional and North Carolina actual malice on the part of the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper. The publications and/or selective failure to publish which interferes with the Plaintiff's right to practice medicine were carried out in bad faith and/or without probable cause and/or without checking for the truth with the means at hand and were thus carried out with a reckless disregard for the truth and for the Plaintiff's right to practice medicine and with North Carolina actual malice on the part of the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper. The publications and selective failures to publish which libel and/or slander the Plaintiff were carried out with wanton and willful disregard of

the Plaintiff's rights by the Defendant Newspaper and/or Defendant Taylor and/or some other employees of the Defendant Newspaper.

67. As a result of the interference with the Plaintiff's private property right to practice medicine, referred to in paragraph 66 hereinabove, the Plaintiff has suffered damages from severe emotional distress causing the loss of hundreds of hours of sleep, some mental depression, severe tension at times, increased migraine headaches, increased esophageal reflux and increased gout. Additionally, the Plaintiff has suffered special damages in the form of the cost of secretarial help, office supplies, legal consultation, transportation costs, lost professional fees and impairment of personal relationships with family and friends plus general damages including damages to his professional reputation and loss of future professional fees. The Plaintiff is entitled to punitive damages for the

injuries he has suffered in connection with this claim.

INCORPORATION OF DOCUMENTS ON
FILE IN PRECEDING ACTIONS

68. By reference, the Plaintiff incorporates in all of his claims herein, for the purpose of showing compliance with statutory law limiting the time allowed to file claims only, the following documents on file in Pitt County 86-CVS-2235:

(a) Paragraphs 1-30 of Complaint filed on December 16, 1986. (A copy labeled EXHIBIT B is attached.)

(b) Plaintiff's Motion To Amend Complaint, Motion To Supplement Complaint, filed on February 12, 1988. (A copy labeled EXHIBIT C is attached.)

(c) Plaintiff's Notice of Dismissal filed on February 19, 1988. (A copy labeled EXHIBIT D is attached.)

Further, for the same purpose, the Plaintiff incorporates in all of his claims herein by reference the following documents on file

in Pitt County 89-CVS-151:

(a) Application and Order dated January 25, 1989, granting Plaintiff a 20 day extenstion of time to file his complaint. (A copy labeled EXHIBIT E is attached.)

(b) Complaint filed on January 31, 1989. (A copy labeled EXHIBIT F is attached.)

(c) Plaintiff's Notice of Dismissal filed on February 3, 1989. (A copy labeled EXHIBIT G is attached.)

DEMAND FOR JURY TRIAL

69. The Plaintiff demands a jury trial as to all matters properly triable thereby.

WHEREFORE the Plaintiff respectfully
PRAY THE COURT:

a. That the Plaintiff have and recover from the defendants, both jointly and severally, judgement in the sum greater than ten thousand dollars (\$10,000), with interest thereon; as relief for special damages, general damages and punitive damages incurred or to be incurred in excess of ten thousand

dollars (\$10,000).

b. That the costs of this action be taxed against the defendants.

c. For a jury trial as to all issues properly triable thereby.

d. For all other and further relief as to the Court may seem just and proper.

This the 17th day of February, 1989.

S/ JOSEPH M. WARD

Joseph M. Ward
121 West Power Street
Ayden, NC 28513
Telephone: 919 746-3191

NORTH CAROLINA

PITT COUNTY

JOSEPH M. WARD, first being duly sworn,
deposes and says:

That he is the plaintiff in the foregoing action: that he has read the foregoing AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL and that the contents of said AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL are true to his own knowledge except as to those matters stated on information and belief and as to those matters he believes them to be true.

S/ JOSEPH M. WARD

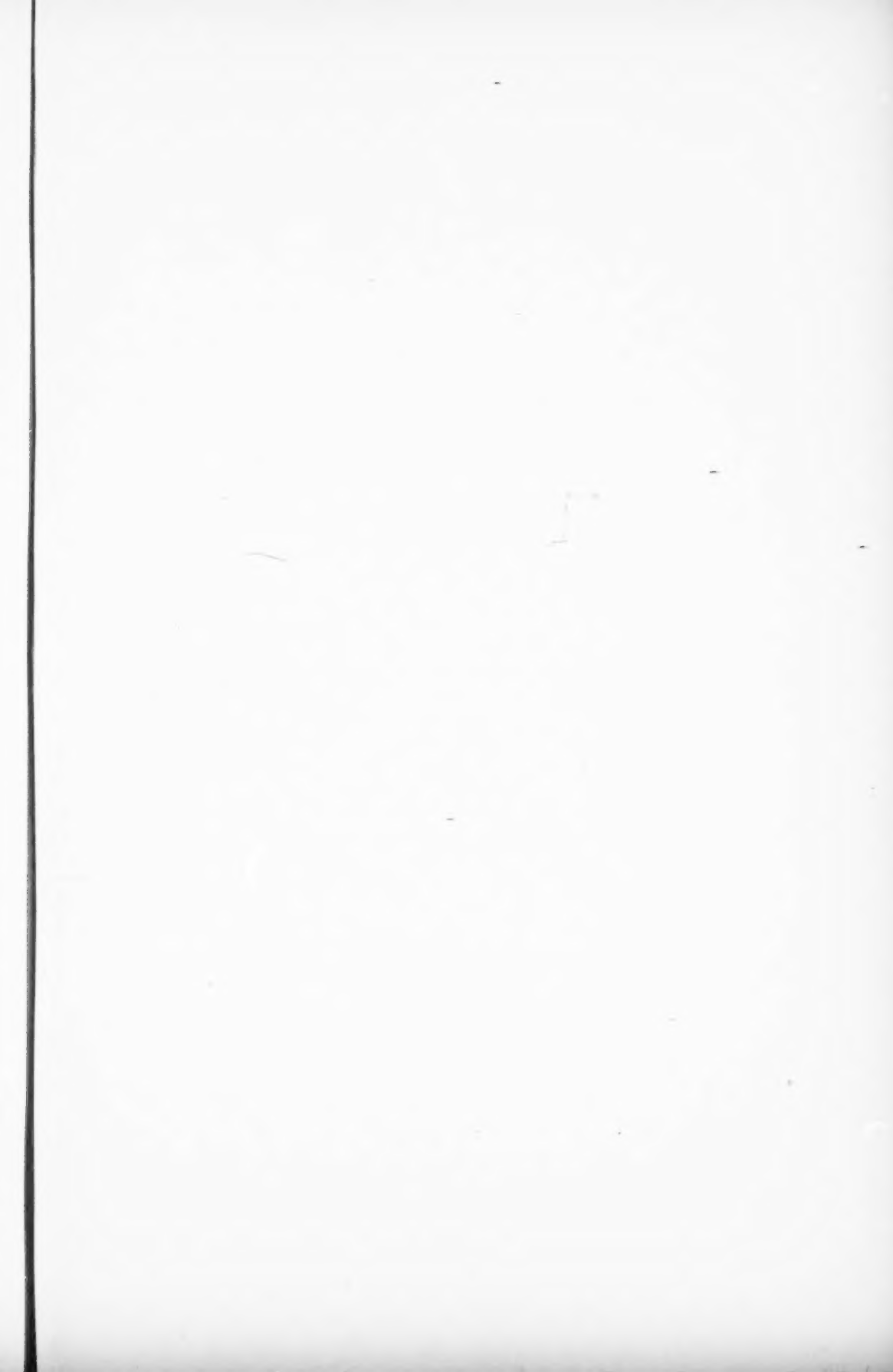
JOSEPH M. WARD

Sworn to and subscribed before me this
the 17th day of February, 1989.

S/Eliza J. Richardson
NOTARY PUBLIC

My Commission Expires: Dec. 17, 1992

Exhibits to Complaint are being omitted
from appendix.



NO. 82-474
SUPREME COURT OF THE UNITED STATES

OCTOBER 1990 TERM

JOSEPH M. WARD,

PETITIONER (PLAINTIFF)

THE DAILY REFLECTOR, INC.,
ALVIN TAYLOR

RESPONDENTS (DEPENDANTS)

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO
THE NORTH CAROLINA SUPREME COURT

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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BEST AVAILABLE COPY

QUESTION(S) PRESENTED FOR REVIEW

The Respondents disagree with Petitioner's presentation of the Questions Presented For Review and submit in lieu thereof, the following:

WHETHER THE ACTIONS OF THE APPELLATE COURTS OF THE STATE OF NORTH CAROLINA AFFIRMING DISMISSAL OF PETITIONER'S CLAIMS PURSUANT TO THE PROVISIONS OF RULE 12(b)(6) AND RULE 41(a)(1) OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE INVOLVE ANY LEGITIMATE FEDERAL QUESTIONS COGNIZABLE BY THE SUPREME COURT OF THE UNITED STATES?

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ARGUMENT

I. THE ACTIONS OF THE APPELLATE COURTS OF THE STATE OF NORTH CAROLINA AFFIRMING DISMISSAL OF PETITIONER'S CLAIMS BASED UPON HIS VIOLATION OF RULE 12(b)(6) OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE WERE PROPER AND DO NOT INVOLVE ANY LEGITIMATE FEDERAL QUESTIONS COGNIZABLE BY THE SUPREME COURT OF THE UNITED STATES.

The Respondents maintain that the action of the trial court granting their Motion to Dismiss pursuant to the provisions of Rule 12(b)(6) of the North Carolina Rules of Civil Procedure was clearly justified based upon the controlling authorities in this jurisdiction. The Respondents' Rule 12(b)(6) Motion to Dismiss was properly presented and directed to test the legal sufficiency of both the Petitioner's complaint in general, as well as the individual claims included therein. The trial court subsequently granted the

Respondent's Rule 12 (b) (6) motion "...as to the plaintiff's (Petitioner's) false light invasion of privacy claim". Appendix, p 5(b).

A complaint is without merit and may be dismissed pursuant to Rule 12 (b) (6) if there is an absence of law to support a claim of the sort made, if there is an absence of fact sufficient to make a good claim, or if there is a disclosure of facts which will necessarily defeat the claim. Oats v. Jag, Inc., 314 N. C. 276, 333 S. E. 2d 222 (1985).

In order to withstand a motion to dismiss pursuant to Rule 12 (b) (6), the complaint must provide sufficient notice of the events and circumstances from which the claim arises, and must make allegations sufficient to satisfy the substantive elements of at least some recognized claim. Harris v. NCNB National Bank, 85 N. C. App. 669, 355 S. E. 2d 838 (1987). A claim should be dismissed under Rule 12(b) (6) where it appears that the

plaintiff is entitled to no relief under any statement of facts which could be proven. Peoples Sec. Life Insurance Company v. Hooks, 322 N. C. 216, 367 S. E. 2d 647 (1988).

In the present action, the Petitioner places great reliance and bases his complaint in large part upon the false light invasion of privacy tort. The North Carolina Supreme Court has heretofore firmly and finally refused to recognize the branch of the invasion of privacy tort arising from publicity by which the defendant places the plaintiff in a false light in the public eye. Renwick v. News and Observer, 310 N. C. 312, 312 S. E. 2d 405 (1984). In upholding the trial court's dismissal of plaintiff's claims pursuant to defendant's Rule 12(b)(6) motion, the Court in Renwick stated:

We will not expand the tort of invasion of privacy recognized in this jurisdiction to include "false light" invasions of privacy...the precise question presented by the plaintiff here - whether publicity by a defendant which places a plaintiff in a false light before

the public gives rise to a claim for which relief can be granted upon a theory of invasion of privacy. A plaintiff must recover in such situations, if at all, in an action for libel or slander... Our continuing "consideration of the constitutional right of free speech and of a free press" guaranteed by the First Amendment to the Constitution of the United States, as well as a proper interest in judicial efficiency, leads us to reject the concept of a separate tort of false light invasion of privacy. Two basic concerns argue against the recognition of a separate tort of false light invasion of privacy. First, any right to recover for a false light invasion of privacy will often either duplicate an existing right of recovery for libel or slander or involve a good deal of overlapping with such rights. Second, the recognition of a separate tort of false light invasion of privacy, to the extent it would allow recovery beyond that permitted in actions for libel or slander, would tend to add to the tension already existing between the First Amendment and the law of torts in cases of this nature... Given the First Amendment limitations placed upon defamation actions by Sullivan and upon false light invasion of privacy actions by Hill, we think that such additional remedies as we might be required to make available to plaintiffs should we recognize false light invasion of privacy claims are not sufficient to

justify the recognition in this jurisdiction of such inherently constitutionally suspect claims for relief. Additionally, the recognition of claims for relief for false light invasions of privacy would reduce judicial efficiency by requiring our courts to consider two claims for the same relief which, if not identical, would not differ significantly. We reject the notion of a claim for relief for false light invasion of privacy in this jurisdiction. The trial court correctly dismissed this plaintiff's claims based upon this theory for failure to state a claim upon which relief could be granted. Renwick v. News and Observer, 310, N. C. 312, 321-326, 312 S.E. 2d 405, 414-419 (1984).

Recently, the North Carolina Supreme Court had the opportunity to consider recognition of yet another branch of the invasion of privacy tort based upon truthful public disclosure of private facts. In Hall v. Post, 323 N. C. 259, 372 S. E. 2d 711 (1988), the Court relied upon and reaffirmed its holding in Renwick, *supra*, in rejecting invasion of privacy claims based upon truthful public disclosure of private facts:

Although expressing constitutional and other reservations, this Court has recognized a general right of privacy as a part of the tort law of this State. See Flake v. News Co., 212 N. C. 780, 195 S. E. 55 (1938) (recognizing the "appropriation" branch of the tort). However, we have not recognized or applied either of the two branches of the tort which,

because they arise from publicity, most directly affect First Amendment speech and press rights. Quite to the contrary, we have refused to recognize the branch of the invasion of privacy tort arising from publicity by which the defendant places the plaintiff in a false light in the public eye. Renwick v. News and Observer, 310 N. C. 312, 312 S. E. 2d 405 (1984). We did so because "false light" claims often would duplicate or overlap existing claims for relief ... Additionally, "recognition of a separate (false light) tort ... would tend to add to the tension already existing between the First Amendment and the law of torts ... For the same reasons, we now hold that claims for invasions of privacy by publication of true but private facts are not cognizable at law in this State." Hall v. Post, 323 N. C. 259, 265, 372 S. E. 2d 711, 717 (1988).

"The general law of the right to privacy, as a matter of tort law, is mainly left to the law of the states..."

Annotation, Supreme Courts' Views As To The Federal Legal Aspects Of The Right Of Privacy

43 L. Ed. 2d 871, 875-76. This Court, however, in deciding the case of New York Times v. Sullivan, 376 U.S. 254 (1964) held

that the First Amendment itself imposes significant limitations upon state claims for libel and slander. Subsequently, the Court decided Time, Inc. v. Hill, 385 U.S. 374 (1967) which extended First Amendment protections, at least as stringent as those required by Sullivan, to defendants in cases for false light invasion of privacy.

We believe that we will : create a grave risk of serious impairment of the indispensable service of a free press in a free society if we saddle the press with the impossible burden of verifying to a certainty the facts associated in news articles with a person's name, picture or portrait, particularly as related to nondefamatory matter. Time, Inc. v. Hill, 385 U.S. 374, 389 (1967) (emphasis added).

It is submitted that the decision of the North Carolina Supreme Court in Renwick v. News and Observer, 310 N.C. 312, 312 S.E. 2d 405 (1984), and as applied in the present action resulting in dismissal of Petitioner's claims based upon false light invasion of privacy, is in full and complete conformity

with the decisions of the Supreme Court of the United States. According, the Petitioner's Petition for Writ of Certiorari does not present any legitimate federal questions cognizable by this Court.

II. THE ACTIONS OF THE APPELLATE COURTS OF THE STATE OF NORTH CAROLINA AFFIRMING DISMISSAL OF PETITIONER'S CLAIMS BASED UPON HIS VIOLATION OF RULE 41(a)(1) OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE WERE PROPER AND DO NOT INVOLVE ANY LEGITIMATE FEDERAL QUESTIONS COGNIZABLE BY THE SUPREME COURT OF THE UNITED STATES.

Rule 41(a)(1) of the North Carolina Rules of Civil Procedure provides:

... Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any Court of

this or any other State or of the United States, an action based on or including the same claim. N. C. G. S. 1A-1, Rule 41(a)(1) (emphasis added).

The "two dismissal rule" of N. C. G. S. 1A-1, Rule 41(a), as it is commonly referred to, was intended to prevent delays and harassment by a plaintiff securing numerous dismissals without prejudice. 9 C. Wright and A. Miller, Federal Practice and Procedure, Sec. 2368 at 189 (1971). "G.S. 1A-1, Rule 41 (a)(1) provides that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this or any other State or of the United States, an action based on or including the same claims". Parrish v. Uzzell, 41 N. C. App. 479, 483, 255 S. E. 2d 219, 223 (1979).

In a recent case involving the identical issue presented to the North Carolina Courts in the present action, the trial court granted defendant's summary judgment motion

on the basis of plaintiff's violation of the the "two dismissal rule". In affirming the action of the trial court, the North Carolina Court of Appeals stated:

The issue raised by plaintiff's appeal is whether plaintiff's second voluntary dismissal of the claim constituted an adjudication on the merits under N. C. Gen. Stat. Sec. 1A-1, Rule 41 (a)(1), thus barring plaintiff from bringing the third action on this claim. We hold that it does and affirm summary judgment for defendant... This "two dismissal" rule as it is called, was intended to prevent delays and harassment by a plaintiff securing numerous dismissals without prejudice... The requirements of the two dismissal rule are... met under Rule 41 (a)(1)... The purpose of the two dismissal rule - to prevent abuse and harassment by a plaintiff securing numerous dismissals without prejudice - is advanced in this case. City of Raleigh v. College Campus Apartments, Inc. 94 N. C. App. 280, 281-284, 380 S. E. 2d 163, 164-167 (1989).

Like City of Raleigh, Id., and irrespective of Petitioner's imaginative generalizations alleging the presence of broad constitutional issues, the Appendix to

the present Petition For Writ of Certiorari clearly reflects that the actions of the North Carolina courts involved no more or no less than a determination of whether Petitioner violated a state procedural rule. It is submitted that the trial court's Order dismissing Petitioner's action for violation of the "two dismissal rule" of N.C.G.S. 1A-1, Rule 41(a)(1), which action was affirmed by the North Carolina appellate courts, was entirely proper. Aside from the correctness of said rulings, however, it is equally clear that the present Petition For Writ of Certiorari fails to present any legitimate federal questions cognizable by this Court.

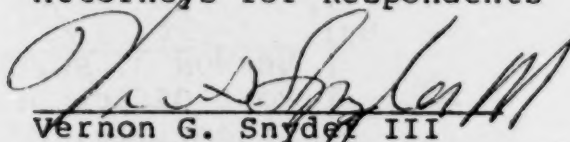
CONCLUSION

The Respondents maintain that the actions of the appellate courts of the State of North Carolina affirming dismissal of Petitioner's claims pursuant to the provisions of Rule 12(b)(6) and Rule 41 (a)(1) of the

North Carolina Rules of Civil Procedure do not involve any legitimate federal questions cognizable by the Supreme Court of the United States. Accordingly, the Respondents respectfully request the Court to deny the Petitioner's Petition For Writ Of Certiorari.

Respectfully submitted, this the 11th day of October, 1990.

GAYLORD, SINGLETON, McNALLY,
STRICKLAND & SNYDER
Attorneys for Respondents

A handwritten signature in dark ink, appearing to read 'Vernon G. Snyder III', is written over the printed name.

Vernon G. Snyder III
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CERTIFICATE OF SERVICE

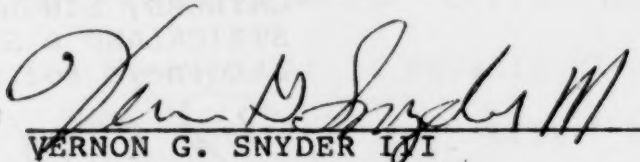
I hereby certify that three (3) copies of the foregoing Brief In Opposition To Petition For Writ of Certiorari were mailed to the Petitioner by placing true copies of same in the United States mail, postage prepaid, and addressed as follows:

Dr. Joseph M. Ward
121 West Power Street
Ayden, NC 28513

This the 11th day of October, 1990.

GAYLORD, SINGLETON, McNALLY,
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Attorneys for Respondents

By:



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NO. 90-474

SUPREME COURT OF THE UNITED

OCTOBER 1990 TERM

JOSEPH M. WARD

PETITIONER

V

THE DAILY REFLECTOR, INC.

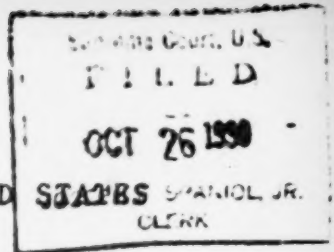
ALVIN TAYLOR

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO
THE NORTH CAROLINA SUPREME COURT

SUPPLEMENTAL BRIEF

JOSEPH M. WARD
PRO SE
121 WEST POWER STREET
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BEST AVAILABLE COPY

QUESTION PRESENTED FOR REVIEW

V. ARE SUFFICIENT SAFEGUARDS IN PLACE TO ENSURE THAT STATE APPELLATE COURTS ADEQUATELY FULFILL THEIR DUTIES RELATING TO DUE PROCESS AND EQUAL PROTECTION UNDER THE LAWS, PURSUANT TO THE 5TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION?

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INTERVENING MATTER NOT AVAILABLE
AT THE TIME OF PETITIONER'S LAST FILING

On pages 26-32 of his Petition For Writ Of Certiorari submitted on September 12, 1990, the Petitioner contends that there is substantial evidence that he has been damaged by unacceptable bias in the trial court and in the North Carolina Appellate Courts. Since then, the Petitioner has been saddled with an almost unbelievable ruling in yet another action. In Pitt County (N.C.) 89CVS387 (one of the false defamation suits related to the nursing home controversy; see Petition For Writ Of Certiorari, p. 27), sanctions including \$1,950.00 in attorney's fees were entered against the Petitioner in this action and in favor of a defendant television station. The Petitioner appealed. (N.C. Court of Appeals No. 903SC564.) The Record On Appeal was settled by agreement and filed in time on May 29, 1990.

On July 10, 1990, the Petitioner filed his brief in time. On July 31, 1990, the defendant-appellees filed their Motion To Dismiss. The Motion To Dismiss reads in part as follows:

Defendants Capital Cities/ABC, Inc., and Ned Warwick respectfully move the Court, pursuant to Rule 25 (b) of the Rules of Appellate Procedure, to dismiss the interlocutory appeal of Plaintiff-Appellant from the Order of the Honorable William C. Griffin, Jr., Judge Presiding, entered on 14 December, 1989, striking parts of the Plaintiff's Complaint and imposing Rule 11 sanctions, on the grounds of his failure to comply with the Rules of Appellate Procedure and for lack of jurisdiction, the Record On Appeal containing no summons with return or other papers showing jurisdiction

of the trial court over person or property, or a statement showing same as required by Rule 9 (a) (1) (c) of the Rules of Appellate Procedure. In support of such Motion To Dismiss, Defendant-Appellees show the following matters. _____

The Motion contains no allegation that the Petitioner had violated the North Carolina Rules Of Appellate Procedure other than by failing to include a copy of the summons with return or other papers showing jurisdiction of the trial court over the defendant-appellees in his Record On Appeal. On August 14, 1990, the Petitioner (Plaintiff-Appellant in that action) timely filed his Response To Defendant-Appellees Motion To Dismiss Appeal. In his response, the Petitioner pointed out the fact that the Record On Appeal contained a copy of the Complaint that he had filed and submitted

that such a filing was sufficient to show jurisdiction over the person who signed the complaint, as to whether or not he violated any of the North Carolina Rules Of Civil Procedure by signing the complaint. Further, the Petitioner submitted that jurisdiction of the trial court and/or the Court of Appeals over the defendant-appellees or their property was not pertinent to that appeal. Even so, the Petitioner pointed out the fact (s) that the Record On Appeal contains a copy of the Defendants' Answer and Counterclaim and that the defendants did not assert a defense of lack of jurisdiction over the person in any of their pre-answer defense motions (filed with their Answer) or in the Answer itself. Further, the Petitioner submitted that failure to present a defense of lack of jurisdiction over the person along with other pre-answer defenses submitted by motion, if any, waives

that defense, citing N.C. General Statute 1A-1 (North Carolina Rules Of Civil Procedure), Rule 12 (h) (1) and Spartan v. Brown, 14 N.C. App. 383, 188 S.E. 2d 574 (1972). Further, the Petitioner submitted that, even if the defendant-appellees are determined to have filed no pre-answer motions, they waived their right to a defense of lack of jurisdiction over the person by failing to include that defense in their answer, citing the same authority cited above. N.C.G.S. 1A-1, Rule 12 (h) (1) states as follows:

A defense of lack of jurisdiction over the person, improper venue, insufficiency of process or insufficiency of service of process is waived (1) if omitted from a motion in the circumstances described in section (g), or if it is neither made by motion under this rule nor included in a responsive pleading

or an amendment thereof permitted
by Rule 15 (a) to be made as a
matter of course.

In addition to Spartan Leasing, Inc. v Brown, supra, the following case rulings are consistent with the Petitioner's contention that the defendants waived the defense of lack of jurisdiction over the person when they failed to include that defense in either a pre-answer motion or their Answer: Harris v Denhaur, 84 N.C. App. 666, 353 S.E. 2d 673 (1987), Hall v Hall, 65 N.C. App. 797, 310 S.E. 2d 378 (1984), Jackson County ex rel. Child Support Enforcement Agency v. Swayney, 75 N.C. App. 629, 331 S.E. 2d 145 (1985), reversed in part on grounds other than lack of jurisdiction, 319 N.C. 52, 352 S.E. 2d 413, cert denied _____ U.S. _____, 108 S Ct 93, 98 L. Ed 2d 54 (1987) and Sims v Stores, Inc., 285 N.C. 145, 203 S.E. 2d 769 (1974). Harris, Supra

(1987), holds that a defendant submits to the jurisdiction of the court by formally entering a voluntary appearance, by seeking some affirmative relief at the hands of the court, or by utilizing the facilities of the court in some manner inconsistent with the defense that the Court has no jurisdiction over her. Jackson County, Supra (1987) holds that the defendant waived his right to contest lack of personal jurisdiction when he filed his answer without raising the defense of lack of jurisdiction over the person. The Record On Appeal not only contains a copy of the Defendants' Answer (containing their defenses presented by motion), but also an affidavit of defendant's counsel supporting entry of attorney's fees as a sanction, verbatim transcript of hearing at which counsel for the defendants participated and Stipulations As To Appeal (including the contents of the Record On

Appeal) signed by counsel for the defendants. From the record it is very clear that the trial court obtained initial jurisdiction over the defendants when the defendants filed their Answer, if such jurisdiction, in fact, had not been obtained by a proper summons having been properly issued and properly served (it had been). The subsequent appearances of the defendants make it abundantly clear that the trial court had acquired jurisdiction over them. Further, nothing in the Record On Appeal shows that the defendants even contested jurisdiction in the trial court (and they did not).

On September 24, 1990, the North Carolina Court Of Appeals entered an Order allowing the defendants above referred to Motion To Dismiss Appeal. The Order reads as follows:

The motion filed on the 31st day of July, 1990 and designated "Motion To Dismiss" is allowed. Appeal is

dismissed. Appellant to pay costs.
By order of the Court this 24th day
of September, 1990.

And it is considered and adjudged
further, that the plaintiff-
appellant, do pay the costs of the
appeal in this Court incurred, to
wit, the sum of TWENTY-NINE AND
NO/100 DOLLARS (29.00) and execution
issued therefor.

How could the North Carolina Court Of
Appeals have ignored its own relatively
recent rulings in Harris, Supra, Hall, Supra,
Jackson County, Supra, plus the North Carolina
Supreme Court's ruling in Sims, Supra (1974)
and its own ruling in Spartan Leasing,
Supra (1972)? In view of past erroneous
rulings and unjustified delays that the
Petitioner has experienced in the North
Carolina Court Of Appeals, he respectfully
submits that unacceptable bias against him

on the part of one or more of that Court's judges is the most logical explanation. If present, how did such bias come to exist? The Petitioner respectfully submits that the North Carolina Court Of Appeals began to delay the resolution of his cases and enter odd rulings (suggestive of bias) against him several years ago. At first, the Petitioner remained silent. As time went on, the rulings appeared to get worse. In January, 1990 the Court Of Appeals sustained the Rule 12 (b) (6) dismissal of an action brought against a nursing home by the Petitioner. The Petitioner did not and does not believe a Rule 12 (b) (6) dismissal of the entire action was justified. (Three attorneys have agreed with him.) The Court Of Appeals' Opinion affirming the dismissal was written by Judge S. Gerald Arnold and was filed on January 16, 1990.

Judge Arnold, a Democrat, is Chairman

of the North Carolina Judicial Standards Commission. North Carolina elects its judges. Domination of our judiciary by Democrats is somewhat threatened this year. On February 17, 1990, an article appeared in the Raleigh N.C. News And Observer relating to new guidelines for judicial candidates. According to the newspaper, the guidelines urged judicial candidates to avoid "attacks of a personal nature as well as attacks on specific cases" _____. According to the article, Judge Arnold suggested that lawyers, the press and others should bring "shame and disrepute on those who don't follow them (the guidelines)." The Petitioner (a former Republican Congressional candidate), feeling that he had already been victimized by erroneous rulings in the trial court and the North Carolina Court of Appeals due to bias, was considerably irritated by the above comments attributed to Judge Arnold. On

February 23, 1990, the Petitioner mailed a letter to the editor (of the News And Observer) which states as follows:

To the Editor:

So judicial dignity must be maintained in the upcoming election at any price. There should be no criticism of rulings in specific cases. And if judicial candidates refuse to go along with the program, the press and others should bring "shame and disrepute" on those who fail to follow the guidelines of the Judicial Standards Commission, says the Commission Chairman, Court Of Appeals Judge S. Gerald Arnold. Presently, the Court Of Appeals is entering some horribly bad decisions which are being hidden under a rock called Rule 30 (e) of the North

Carolina Rules Of Appellate Procedure. If an appeal is decided under that rule, the opinion is not published. It is already difficult to lift the rock and bring a case out into the sunlight. The Judicial Standards Commission appears to be trying to make it even harder and appears to be seeking media help in doing so.

If sitting judges are not to be judged by their acts and omissions in specific cases, why not others, including physicians? That would eliminate malpractice and disciplinary actions against good physicians (and bad ones too). But it would be wrong, just as trying to totally insulate good (and bad) judges from their erroneous decisions is wrong.

The News And Observer has refused to publish any information concerning oddities related

to the rulings in any cases in which the Petitioner is or has been involved. Also, at times the paper has refused to publish general comments of the Petitioner as to what he perceives as being the best way to improve the North Carolina Court System. On this occasion, the newspaper elected to publish the 1st and 3rd paragraphs of the above quoted letter to the editor, but completely deleted the 2nd paragraph, without indicating that the newspaper had changed the letter or informing the writer (the Petitioner).

At the time he prepared his Petition For Writ Of Certiorari addressed to this Court in this action, the Petitioner had forgotten that the above quoted letter to the editor had been published. The recent almost unbelievable dismissal of his appeal by the North Carolina Court Of Appeals in appeal number 903SC564, described on pages 1 - 9 hereinabove, caused the Petitioner

to review his files where he found a copy of the letter to the editor. He then decided to review the timing of rulings in the North Carolina Court Of Appeals and the North Carolina Supreme Court in relation to publication of the letter. The above quoted letter to the editor was published on March 3, 1990. On March 20, 1990, the North Carolina Court Of Appeals entered its ruling in this action affirming the trial court's ruling that the Plaintiff had filed three actions containing the same claim (when he had in fact filed two actions with entirely separate claims, dismissed both and later filed a third action containing claims from each of the earlier actions). On April 5, 1990, the North Carolina Supreme Court entered an Order dismissing the Petitioner's Appeal from the opinion written by Judge Arnold (in the nursing home case referred to on page 10 above) and denying his Petition

For Discretionary Review. (On July 6, 1990, the Petitioner petitioned this Court for a writ of certiorari in that action, Petition No. 90-87. On October 1, 1990, this Court denied the Petition.) On June 13, 1990, the North Carolina Supreme Court entered an Order in the instant case dismissing the Petitioner's Appeal, denying the Petitioner's Petition For Discretionary Review and denying the defendants' motion for entry of sanctions based on frivolous appeal.

The Petitioner respectfully submits that the above described series of events and rulings, plus the series of events and rulings described on pages 27 - 30 of his Petition filed in this action and on pages 49 - 57 of his Petition For Writ Of Certiorari (No. 90-87) filed with this Court in Ward v Hillhaven, constitute substantial (if not clear and convincing) evidence to support his contention that the North Carolina Court Of Appeals not only committed

error in affirming the trial court's dismissal of the instant case, but erred due to prejudice on the part of one or more judges of that Court. While the evidence is less clear as to the North Carolina Supreme Court, it is reasonable to believe that bias in the North Carolina Court Of Appeals may have spilled upward into the North Carolina Supreme Court.

The Petitioner has appealed the dismissal of his appeal by the North Carolina Court Of Appeals (referred to on pages 8-9 hereinabove) to the North Carolina Supreme Court. The defendants in that case have moved the North Carolina Supreme Court to dismiss the Petitioner's Appeal and to deny his Petition For Discretionary Review. Further, the defendants had the gall to seek sanctions against the Petitioner for having filed a frivolous appeal from the North Carolina Court Of Appeals' Order dismissing his appeal. The Petitioner will not be at

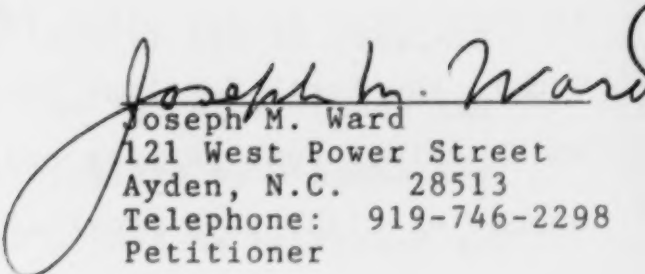
all suprised if the North Carolina Supreme Court refuses to hear that matter.

It is easy to say that the Petitioner might have fared better had he remained publicly silent. On the other hand, the Petitioner was victimized by a number of erroneous rulings before he expressed any public opinion as to our court system. And surely he has at least as much right to freedom of speech as do those who have falsely defamed him with impunity. And clearly, he has a right to participate actively in the political process, even when that process involves the dubious activity of selecting judges through partisan elections. The North Carolina Appellate Courts should have been careful not to enter any rulings even suggestive of bias on their part. The Petitioner respectfully submits that they fell far short as to that obligation.

CONCLUSION

The Petitioner respectfully submits that, in the absence of an appeal of right to this court or any other Federal Appellate Court, the North Carolina Court System, which allows some parties only one level of appeal of right to a panel of three judges who come to the bench by way of partisan elections while affording some parties a second appeal of right to the full North Carolina Supreme Court, falls short as to providing due process and equal protection pursuant to the 5th and 14th Amendments of the United States Constitution. Further, he respectfully submits that sufficient safeguards are not in place to ensure that the North Carolina Appellate Courts adequately fulfill their duties relating to due process and equal protection under the laws pursuant to the 5th and 14th Amendments of the United States Constitution.

Respectfully submitted this the 24th
day of October, 1990.


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Petitioner

